May 2023

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Untangling the puzzle

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Improved HMRC guidance about apportioning output tax

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Sole practitioners

Advice from those who have already taken the decision to fly solo

HELEN WHITEMAN
JANE ASHTON

Welcome
May is a special month

May is a special month for us as we support students sitting their exams and celebrate with those who join as members at our Admission ceremonies. There are 3,330 students across both bodies, sitting 4,340 papers! For CIOT students, they will be returning to centres for computer based exams and we wish them all the very best for the exam season. The CIOT Admission ceremony will be held at Drapers' Hall on 10 May and we'll be welcoming 387 new members and their guests across two ceremonies. We are looking forward to celebrating with you! Please do come and say hello to us!

We are both very excited to have been shortlisted for the Tolley's Contribution to Taxation award for a not for profit organisation. This category is a public vote and the winner will be announced on 18 May and we wish all nominees the best of luck!

This year's CTA address will be held (hybrid) on 8 June at 6.30pm at RSA House in London. The keynote speaker is Pascal Saint-Amans and the topic is 'The future of international tax reform'. Our incoming President Gary Ashford will chair a panel discussion with Heather Self and Tove Ryding. Please register when you receive the email invitation.

Our EDI Committee is making good progress already with our EDI strategy and action plan and a workstream is up and running which is focusing on 'Returners to Work'. Committee member Sylvia Hulse and Head of Membership Emma Barklamb are both leading on this work. Please do look out for further developments and opportunities to participate.

Several branches have significant 'birthdays' this year. If you are local to the area, please do attend and support them with their celebrations. Manchester and District celebrates its 90th on 4 July in The Rain Bar off Deansgate; East Anglia celebrate their 40th Anniversary with a lunch midway through their Conference with Giles Mooney on 3 May; East Midlands are holding a conference and dinner, also celebrating 40 years on 12 June; and North East England are holding a social/networking celebration of their 40th at the Keep in Newcastle on 6 July. These promise to be great fun and are aimed at new and existing members.

We are sure that it won't come as any surprise that the Finance (No2) Bill 2023 when enacted will potentially add over 500 more pages to our increasingly lengthy tax code, ensuring that we remain at the top of 'the longest tax code in the world' league table. Unfortunately, this voluminous tax legislation comes with many drawbacks and creates a multitude of complexities, making it difficult for businesses and taxpayers to comply with their tax obligations.

With the demise of the Office of Tax Simplification, several professional bodies, including the CIOT and ATT have written a joint letter to Victoria Atkins MP, the Financial Secretary to the Treasury, outlining several recommendations which the government should consider introducing to deliver on its commitment to simplify the tax compliance burden of businesses and taxpayers. We are seeking a meeting with the FST to discuss these further and are also arranging a follow-on meeting with Jim Harra at HMRC.

The letter, which can be found in full on both the CIOT and ATT websites, suggests going back to basics, defining what is meant by tax simplification and ensuring that there is the appropriate accountability within HMRC and government to deliver and monitor the simplification. The letter goes on to recommend seeking the views of a broad range of interested stakeholders and gaining early external views to contribute to policy design and implementation. If you have any views on how the tax system could be simplified, we would love to hear from you. Please send your comments to atttechnical@att.org.uk or technical@ciot.org.uk.

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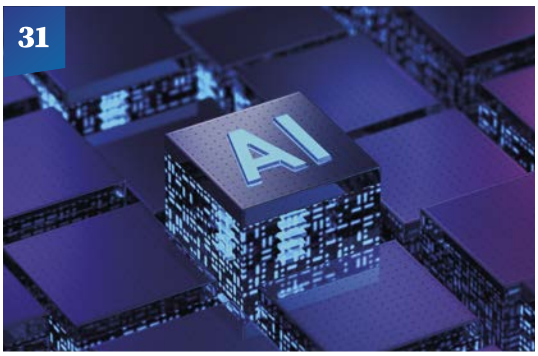

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SUSAN BALL
PRESIDENT

A time for reflection

> I am so proud of all the great things we have done – it is a fabulous team effort.

This is my last article as your CIOT President. It has been an incredible and hugely enjoyable experience for me, and something I will never forget. It's an honour to have been President of a membership organisation and charity that is so well respected in the UK and globally. I wish my immediate successor all the best. I know that they will continue to champion the CIOT both here and overseas, and welcome our 20,000th member. But let's hope they don't also see two monarchs, three prime ministers and four chancellors during their term of office!

I wanted to take a moment to reflect on what has been achieved and the firm foundations that have been laid down for the future of the CIOT. When I joined the presidential team, there were several key areas I was keen raise. I was mindful, though, that the institute has a strategy and can't be pulled in different directions every time it gets a new President.

Like lots of organisations after the pandemic, the CIOT had to find its feet in the new hybrid world. For me, this allowed me to get out and about meeting people, and as well as joining online events in the UK and overseas. I was able to attend the recent ICAS President's dinner, our own joint Presidents' lunch, Admissions and conference. Talking to members, it became apparent that many had frustrations with HMRC service levels, so we picked this up with HMRC and government, providing examples of the issues faced by our members and taxpayers. We will continue to keep the pressure on.

Another overarching theme throughout the past 12 months has been ensuring that we are more inclusive, open and diverse. I am the fourth female to take the role of President. As you may have read in my first article, I am also a state school leaver who is dyslexic and who joined the profession after A levels. (It was, by the way, great to be able to join the World Dyslexia Assembly in New York recently.) We must continue to develop and represent our members, as well encourage people into the profession. From our new diversity and inclusion strategy, the recruitment of council members, hybrid events, changes in style of events and member engagement – as well as the increased activity on social media – hopefully members can see that we are moving forward.

Now I really must take a moment to shout about some technical team successes. These include the delay in MTD; the waiving of penalties for late filing and late payment for a month at the start of the year; changes to Finance Act 2022 on basis period reform and uncertain tax treatment; and the work of our Low Incomes Tax Reform Group (LITRG). Hopefully, members know about these and saw the table in last month's *Tax Adviser* which gives a fantastic summary of our activities (see page 5).

In November, I was privileged to launch our new qualification the Diploma in Tax Technology. It is fantastic news that students have already passed the course, with more coming on board to study. We live in a dynamic and fast changing world and I'm sure we will see further developments in our qualifications. It's wonderful that all these efforts have been recognised in the Tolley's Taxation Awards.

A key aspect of serving as President is chairing council meetings and supporting the executive with its strategy. Soon I will be a Past President, though you don't completely get let off, attending the Officers Group meetings for a further year to make sure there is some continuity. I intend to continue to champion the institute and the tax profession.

I also have a few thankyous – firstly to Helen Whiteman, my fellow officers Peter, Gary and Charlotte, our CIOT Council members and the fantastic executive team and staff. A quick shout out to John Cullinane who retires shortly as Director of Public Policy and was President in 2007 when I became chair of the new formed Suffolk Branch.

Also, I must thank RSM UK, RSM's Head of Tax Ali Sapsford and my colleagues in the People Advisory Services team who have enable me to manage taking on the presidential role. Heartfelt thanks must also go to my first Laddy, Richard Smith, who has given me his enthusiastic and constant support throughout my Presidential term. I could go on but there is insufficient space to name everyone – and you know who you are. I also appreciate the encouragement and lovely comments and messages I have had from members during the year – truly humbling.

At the forthcoming AGM, I shall be handing over the reins to Gary Ashford, who will be a fantastic successor. I wish you the very best Gary. I am so proud of all the great things we have done – a fabulous team effort.

Susan Ball
President
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Chartered Institute of Taxation.

SIMON GROOM
DEPUTY PRESIDENT

Outstanding contributions

> Our Technical Team has been shortlisted for Outstanding Contribution to Taxation in 2022-23 by a Not-for-profit Organisation in the annual Tolley's Taxation Awards.

Hello, and welcome to the Deputy President's page for May. The arrival of Spring is usually cause for celebration as vibrant colours appear in the countryside and the memory of the self-assessment deadline fades. But for one cohort of the tax profession, the arrival of Spring probably goes unnoticed as their minds are most definitely focused elsewhere.

I refer, of course, to those aspiring tax professionals who are about to sit their ATT or CTA examinations at the start of May. For you, this means many hours of study, often alongside a demanding day job and family commitments as well.

It is a very long time since I was a student, but I can still remember the long hours spent revising and honing my exam technique. In my day job, as a tutor for Tolley, I see the amount of effort that you put in first-hand. I wish you all the very best for the upcoming examinations and I hope to welcome you as members of the Association at a future Admissions Ceremony.

Moving on to other news...
In April, David Bradshaw held his President's reception at the London Edition. It was lovely to welcome so many volunteers and thank them for the support they have given the Association over the last year. Diane Burleigh, who stepped down as our Lay Public Interest Observer, was awarded Honorary Fellowship for her services to the Association and the commitment she has shown over her term in office.

Tanya Wadeson was presented with the Council award for her dedication to the Association as a Council member and member of several committees, as well as for all the help she has given to the Branch Network over many years. Finally, Arnold Homer was awarded a Certificate of Appreciation for his long service to the Technical Steering Group. If you know anyone that you think deserves an award for their outstanding contribution to the Association, please get in touch.

On the subject of awards, I was delighted to see that our Technical Team has been shortlisted for Outstanding Contribution to Taxation in 2022-23 by a Not-for-profit Organisation in the annual Tolley's Taxation Awards.

Ele Theochari, a member of ATT's Council, has also made the shortlist for the Rising Star award, while Will Silsby, who retired in December after over 10 years as an ATT technical officer, has been shortlisted for Tax Mentor of the Year. The winners will be announced at the Awards Ceremony on 18 May. Thank you to those of you who have voted for us.

It is also time for those of you who are supervised by us for Anti-Money Laundering (AML) to complete your AML return and make payment by 31 May. The registration scheme is now open for the 2023-24 year and failure to register by 31 May will result in referral to the Taxation Disciplinary Board as it is illegal to practice without AML supervision in place.

Our Professional Standards Team are always willing to help anyone who has difficulty registering so please do contact then if you need any help with your renewal.

And looking forward to the month ahead, on 12 May I, along with Fellow Officers from ATT and CIOT, will be attending the Joint President's Lunch in Edinburgh. This is an opportunity for us to meet our stakeholders in Scotland and find out what they need from us and how we can help them to achieve their goals. Feedback from events such as these is really valuable as it helps us to make key strategic decisions and shape the future of the Association.

Before I sign off, and continuing the education theme, I would remind you about the upcoming ATT Annual conferences. You can either attend the conference in person on 29 June as a full day event or join it as two morning half day online sessions on 21 and 23 June. It is an excellent way of keeping up to date with the latest developments but also helps to fulfil your CPD responsibilities. Our speakers will be Rebecca Benneyworth, and Helen Thornley, Emma Rawson and Steven Pinhey from our excellent Technical Team.

Simon Groom
ATT Deputy President
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Changing shapes
The UK tax system

We need the power of statistics to fully illustrate the changes in the UK tax system.

by Bill Dodwell

One of the spin-off benefits of the Budget is that it gives us the opportunity to have a broader look at the UK tax system, armed with up-to-date reporting and forecasting. The Office of Budget Responsibility, ONS and HMRC publish a wealth of useful data.

The place to start is with the total tax raised. The OBR expects that HMRC will collect about £922 billion for 2022/23 and about £950 billion in 2023/24. The big jumps came from 2021/22, when total taxes were £828 billion (which was £82 billion above pre-pandemic year 2019/20) and 2022/23 (some £94 billion above the previous year). These amount to 11% increases in both years.

Income tax: The growing contribution comes from income tax, which is expected to be 28% of total taxes in the current year, at £268 billion. It was just under 26% in 2019/20. Self assessment income tax (mainly self-employment and property income) is about 16.5% of the total.

ONS estimates that there are about 30 million employees in March 2023 (see bit.ly/40jf4uV), using HMRC's RTI data. The numbers have continued to grow, after the major dip during the pandemic. 1.65 million individuals are aged 65 or over.

Income tax paid on payments from registered private pensions is reported to be £18.3 billion in 2020/21 (see bit.ly/43L8O1V), paid by 7.8 million individuals (see bit.ly/41FRbyA). Between 400,000 and 500,000 individuals received flexible access pension payments every quarter, illustrating the use of the 2015 pension freedoms. 12.6 million people received the state pension, with about 7.3 million having an income tax liability.

The big change to the income tax population comes from freezing allowances and thresholds. The OBR published a table in its March 2023 Economic and Fiscal Outlook (see bit.ly/3Ae4ASN).

In the current year, the OBR expects that an additional 2.2 million individuals will pay income tax – taking the total to 35.8 million – and an extra 1.3 million will pay higher rate tax. For most people, PAYE will simply manage the collection of tax but there will be hundreds of thousands who may need to fill in tax returns due to the cuts in the dividend allowance and the capital gains tax annual exempt amount. HMRC estimated for the Office of Tax Simplification's Capital Gains Tax report (see bit.ly/3KUj0MH page 12) that an allowance of £3,000 would mean over 200,000 additional self assessment returns annually; the cut in the dividend allowance may bring in over 1 million (although some will be able to pay extra tax through tax code adjustments). HMRC is no doubt planning for the additional administration for so many new taxpayers.

National insurance: National insurance contributes £172.3 billion (18%). About 62% of national insurance is borne by employers (a proportion which has risen over the years); 36% by employees and just 2% by self-employed individuals (see bit.ly/3USVaFU). Economists naturally point out that employers take into account the total cost of employment, which includes national insurance and apprenticeship levy, as well as salaries and pension contributions. However, at least in the short and medium term, increases in employer national insurance fall rather more directly on the business owners.

VAT: VAT brings in 17% of total taxes – some £162.2 billion. In 2021/22, there were about 2.5 million VAT-registered businesses, of which 47% had sales below the VAT threshold (see bit.ly/43Ziaau). In 2021/22, 27,860 businesses had turnover between £80,001 and £84,999, which no doubt highlights the complexity of managing to remain below the registration threshold. There have been about 300,000 new registrations annually in recent years, highlighting the pressure on HMRC's registration process. There are about 250,000 deregistrations.

Interestingly, 69% of traders were in a net payment position and 31% of traders were in a net repayment position (a proportion which has increased over the years – and which includes some of the biggest traders). DIY housebuilders remain a small population, with about 6,00 to 7,000 claims for new-builds and conversions annually, worth £80 million to £90 million.

Corporation tax: Corporation tax is the final major tax, estimated to bring in 8.5% of total taxes, at £80 billion. The yield is forecast to grow by about 10%, reflecting both the new 25% rate; full expensing for three years; and the permanent level of £1 million for the annual investment allowance.

It takes time for statistics to become available, as returns are submitted only after the end of accounting periods. In 2020/21, over 1.5 million companies paid a total of over £50 billion. Finance and life assurance accounted for about a fifth of that total. There were about 1.5 million SMEs, which paid about 45% of the total – emphasising the value of the 18,000 large companies who contributed 55%.

We should all thank the statisticians and analysts who help us understand more about the UK tax system!

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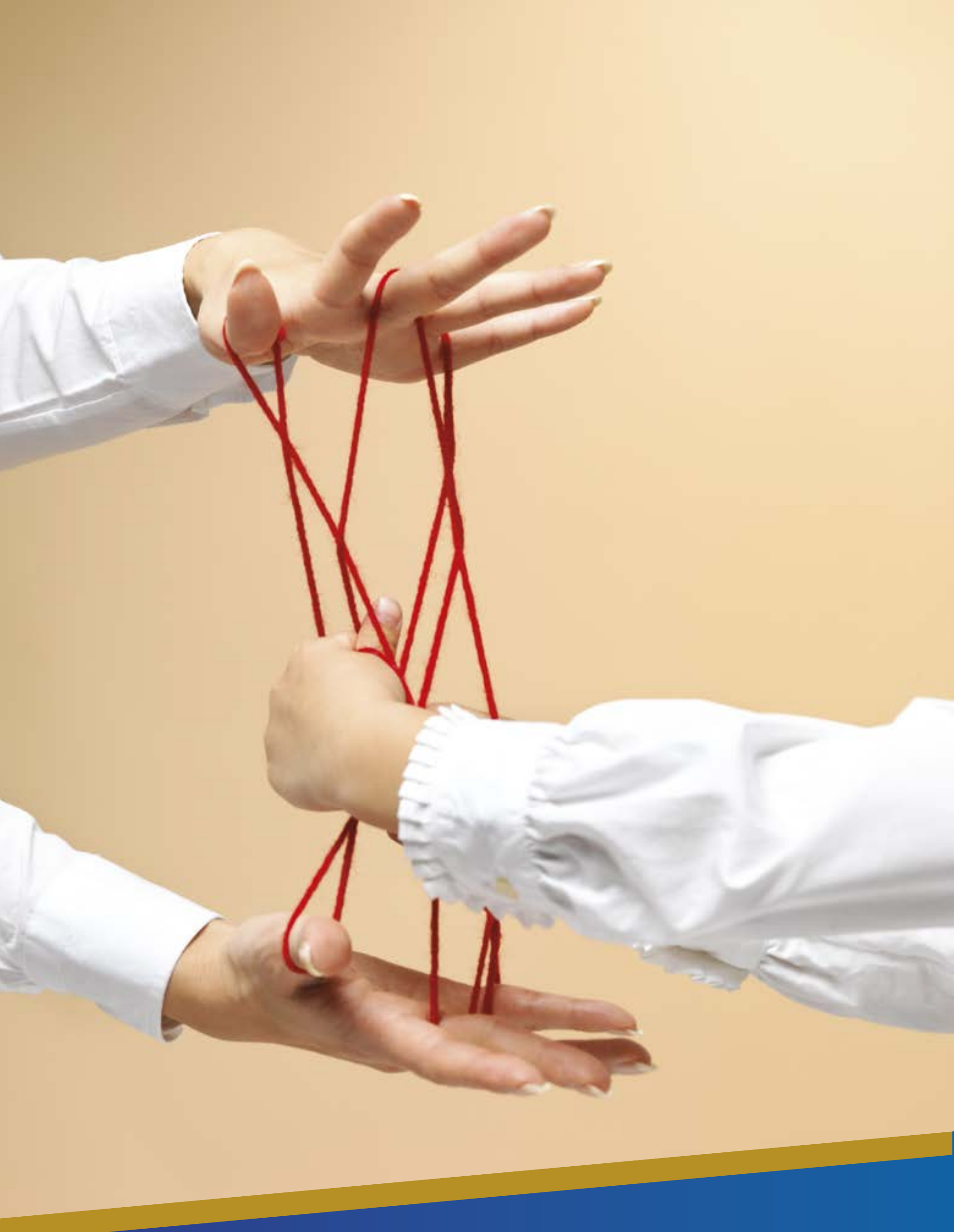
Profile: Bill is the outgoing Tax Director of the Office of Tax Simplification and Editor in Chief of Tax Adviser magazine. He is a past president of the Chartered Institute of Taxation and was formerly head of tax policy at Deloitte. He is a member of the GAAR Advisory Panel. Bill writes in a personal capacity.



Key Points

What is the issue?
Over the next few years, the EU will be modernising and simplifying its VAT procedures for cross-border transactions.

What does it mean for me?
Despite Brexit, UK businesses will be affected by the forthcoming changes, and will need to adapt their procedures and systems to remain compliant and take advantage of the simplification opportunities.

What can I take away?
The initial changes from 1 January 2025 will be to the rules on place of supply, single VAT registration, domestic reverse charge, and the call-off stock simplification. Further ahead, wider e-invoicing and digital reporting requirements will come into effect from the start of 2028.

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Untangling the puzzle

Upcoming EU VAT changes

We examine the VAT changes due to be brought into play in the European Union from 2025 and how they will work in practice.

by Kamal Kataria and Chris Beattie

Readers will no doubt be aware that VAT in the UK celebrated its 50th birthday this year, having first been introduced when the UK joined the European Economic Community in 1973.

Brexit means that the UK and EU VAT systems will now evolve independently of one another, with legislative packages such as the EU proposals for VAT in the Digital Age (ViDA) (which include changes to the platform economy, new digital invoicing and reporting requirements, and movement towards a single EU VAT registration) creating growing differences in the coming years.

Despite the UK's divorce from the EU, the European VAT system remains of significant importance to UK-based businesses, as it defines the rules of engagement with our closest trading partner.

This article looks ahead at some of the EU VAT changes on the horizon and the practical impact they will have on UK businesses which continue to trade into the EU, focusing in particular on the place of supply and single VAT registration changes coming into force in 2025. It is important to note that few of these changes exist in isolation, and those discussed in this article will need to be considered by businesses in the round, alongside the broader package of proposals.

Whilst the ViDA changes are currently proposals and still require unanimous approval of the member states to enter into EU law, they are anticipated to be implemented as proposed, albeit with some of the practical application points yet to materialise – particularly in the case of more complex scenarios which do not neatly align with the situations the proposals intend to cover. The legislative text of these changes is in the proposed Council Directive 2022/0407(CNS).

1 January 2025: Place of supply changes

Whilst the forthcoming changes predominantly impact those trading in goods, the modernisation of the place of supply rules in respect of business-to-consumer (B2C) virtual events, education, entertainment and similar activities merits a discussion.

At present, businesses providing virtual events (for example, a UK business providing live online cooking classes where the participants can interact with the instructor in real time) have three UK/EU rules they need to think about:

1. **The basic rule:** B2C supplies of services are taxed where the supplier belongs.
2. **The electronically supplied services (ESS) rule:** B2C electronically supplied services are taxed where the consumer belongs.
3. **The 'where performed' rule:** B2C supplies of entertainment, education or similar events are taxed where the event takes place.

As the example service appears to involve more than the 'minimum level of human intervention' required by the electronically supplied services definition, rule number two can be disregarded for now. While EU case law in *Geelen* (Case C-568/17) helps us to understand the concept of where an online event actually takes place, a more complex offering by this business involving both live and pre-recorded sessions sees the service appearing to land between the latter two rules. Although taxing events where they take place was perfectly sensible at a time when you could clearly point to the physical place where they were occurring, this approach to taxation hasn't kept pace with an increasingly digital economy.

Fortunately, the position is clarified from the start of 2025, when such services which are streamed or made available digitally will become taxable where the consumer resides. This change provides welcome clarity, and dispels the need to consider the somewhat vague and inconsistently applied ESS definition.

The immediate impact is that UK businesses – such as our aforementioned cooking tutor – providing non-ESS services to EU-based consumers, will trigger VAT registrations where their customers are based. The place of supply will be where the customer belongs, and the EU applies a nil turnover registration threshold for non-established businesses.

This initially suggests an onerous compliance burden, but the One Stop Shop scheme allows businesses to set up a simplified VAT registration with their tax authority of choice, and to report certain sales in all EU member states through a single quarterly filing.

1 January 2025: Single VAT registration

Coinciding with the place of supply changes is the introduction of a new VAT reporting scheme (to operate in parallel with the One Stop Shop) and EU domestic reverse charges. These changes broadly aim to reduce the administrative burden of trading in the EU by reducing the number of separate VAT registrations that a business will require, with a view to increasing compliance overall.

Single VAT registration: a wider scope

Movements of a business's own goods between two EU member states are currently a 'deemed dispatch' from the first country and a 'deemed acquisition' into the second. Even if no sales to third parties are made in either country, the business will still need to maintain active VAT registrations in both.

For businesses which commonly need to move their own goods across the EU, such as those in the manufacturing or life sciences sectors which may have complex supply chains, the VAT reporting of movements of own goods alone can represent a large compliance and administrative burden.

Under the ViDA proposals, from January 2025 a new reporting scheme will be introduced to enable movement of own goods to be reported through a single simplified return. This will remove the need for businesses to register for VAT in individual member states solely for the purposes of reporting movements of own goods.

The scheme will also begin to cover the supply of installed or assembled goods in the EU (e.g. the sale of plant and machinery which is installed at a customer's premises) from the start of 2025. Currently, this ordinarily creates an obligation for UK businesses to register for and charge local VAT in the country where the goods are being installed, particularly with the loss of the pre-Brexit simplification that was historically available.

Although these changes represent a significant step forward towards a single VAT registration in the EU, they exclude business-to-business (B2B) transactions for the time being, due to concerns around the recovery of VAT and potential abuse.

Single VAT registration: practicalities

As with the One Stop Shop, the new movement of own goods reporting scheme is by no means compulsory; however, it offers an attractive administrative simplification for those trading in the EU.

Businesses established outside of the EU are expected to be free to register for the scheme in any EU member state of their choice and, once registered, the scheme's simplified returns are to be filed with the tax authorities in the member state of registration on a monthly basis.

It is vital to note that there is no ability to deduct input VAT through this new scheme. This means that businesses which expect to incur local input VAT in the course of their activities may still need to consider the need for a stand-alone VAT registration as a means of obtaining VAT refunds.

The need for a stand-alone VAT registration is likely to be greater for those businesses incurring a significant amount of import VAT when moving their stock into the EU.

Domestic reverse charge

Whilst B2B transactions are excluded from the remit of the new single VAT registration reporting schemes, January 2025 should also see the mandatory introduction of domestic reverse charges across the EU.

At present, EU VAT law allows member states the option of introducing domestic reverse charges to cover supplies of goods by non-established businesses to VAT registered businesses. Member states such as France, Italy and the Netherlands have adopted these rules.

For example, for a UK business holding goods in France which it intends to sell to a French business that is VAT-registered in France, the basic expectation is that the UK business would need to charge French VAT (and become registered in France, if it hasn't already). However, the existence of a domestic reverse charge means that the UK business doesn't need to become VAT-registered or charge VAT on the supply, as the French VAT-registered customer will be responsible for self-accounting for VAT on their local VAT return.

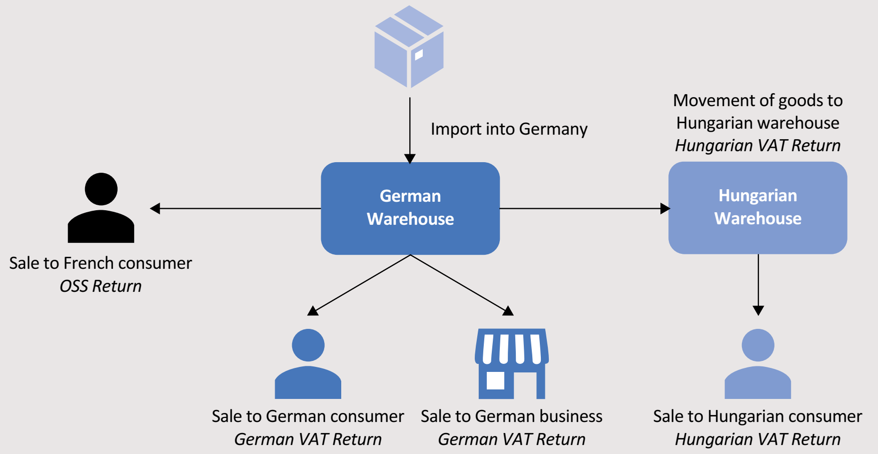
Although removing the need to be VAT-registered in these member states will reduce the compliance burden for the UK business, it also removes the main mechanism by which input tax can be recovered.

In the absence of a VAT registration, input tax would need to be recovered by making refund claims directly to the relevant tax authority, where there will be a greater delay between paying VAT to a supplier and receiving the repayment.

Call-off stock simplification

The current intra-EU 'call-off' simplification, which allows businesses to hold stock in another member state for a specific customer without triggering a VAT registration obligation, is expected to be rescinded from the start of 2025. The introduction of the special scheme to cover movement of own goods, combined with

CURRENT RULES



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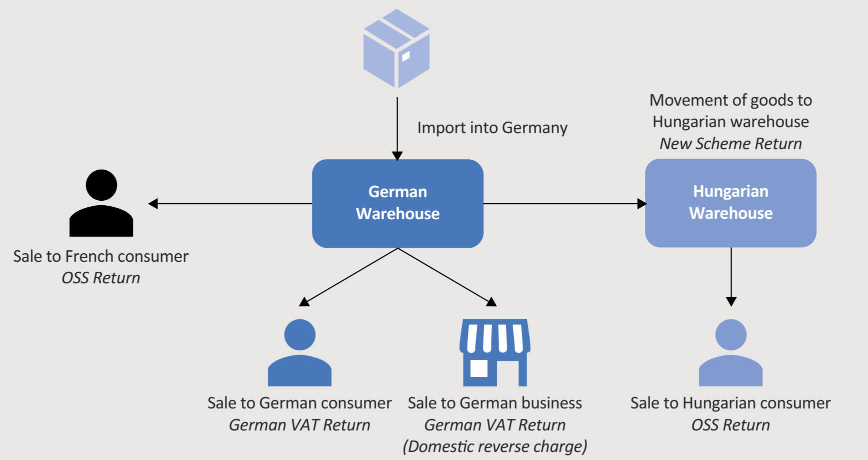

the mandatory reverse charges, eliminates the need for such a simplification.

Businesses will have greater flexibility under the new rule set, as goods can be moved from an EU warehouse to other member states, and sold to any other VAT-registered person without triggering an additional registration obligation. Currently, the call-off stock simplification only produces this outcome where the identity of the customer is known prior to the good's movement.

Case study: how these changes work in practice

To illustrate the practical impact of these changes, let's look at an example involving a UK-based shoe manufacturer which sells both retail and wholesale within the EU.

Our business imports the goods into Germany and stores them within a German warehouse where they are sold to German businesses, German consumers and consumers in other EU member states. It also regularly moves stock from Germany to a Hungarian warehouse to supply the local Hungarian market.

The current rules are shown above. Currently, only the distance sales directly from the German warehouse to consumers in other EU member states can be reported on the One Stop Shop return. The sales within Germany must be reported on the company's German VAT return, and a separate Hungarian VAT registration is required to report the movement of goods to the Hungarian warehouse and sales made therefrom.

The rules from 2025 onwards are shown above. Under the ViDA proposals, from 1 January 2025 the movement of goods to the Hungarian warehouse will be reportable under the new scheme. The subsequent sales from that warehouse will be able to be reported through the One Stop Shop scheme, removing the need to maintain a Hungarian VAT registration. Assuming that our UK business is not established in Germany, it will no longer need to charge local VAT on its sales to German businesses, as its customers will become responsible for accounting for VAT. If the business needed to react quickly to demand, and move goods from either inventory to a separate Czech warehouse, it would also be able to do without any new VAT registration obligations arising, as the movement can be reported through the new scheme.

The overall picture following these changes is simpler and should be easier to manage from a compliance perspective, but the business is now carrying out sales under a number of different regimes (ordinary domestic sales, domestic sales subject to the reverse charge, movements of own goods under the new scheme, and One Stop Shop sales from different member states).

In order to prepare for these changes, our UK businesses will need to look to their tax coding and processes to ensure that their systems are able to correctly identify the right VAT treatment for each transaction type and that the transactions can be accurately identified and reported through the appropriate return.

Conclusion

Businesses trading within the EU should expect significant changes in the coming years, as the EU commission looks to modernise its VAT system whilst simultaneously tackling non-compliance. However, the developments outlined above are only part of the picture, as the single VAT registration proposals go hand in hand with wider e-invoicing and digital reporting requirements which will come into effect from the start of 2028.

The latter represent a fundamental change to how many intra-EU transactions are reported, and deserve a full discussion in their own right.

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Mixed supply challenges
The twists and turns

HMRC has issued improved guidance about apportioning output tax when individual items sold in a bundle of goods or services are subject to different rates of VAT.

by Neil Warren

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VAT and mixed supplies is a hotbed topic that has probably perplexed HMRC's policy teams more than most other issues. That is hardly surprising when the outcome often comes down to shades of grey decisions such as customer perception and a human viewpoint about whether individual goods or services within a package are incidental or otherwise.

To give a practical example, when I buy a zero-rated rail ticket that includes a standard rated cup of tea during the journey, advisers will probably agree that the tea is a minor part of the supply and the sale should be wholly zero-rated; i.e. it is only the train journey that counts.

But what if a sandwich is added to the deal? And then a packet of crisps? And how about a glass of champagne to bring some luxury to the proceedings? Is part of the fare now standard rated as catering? As I hammered out the word 'champagne' on my trusty typewriter, I could imagine many readers raising their hand and shouting out: 'Now it's a mixed supply.'

In this article, I will consider when a mixed supply outcome is relevant and also HMRC's Revenue and Customs Brief 2/2023 (issued on 3 March 2023) about how output tax should be apportioned in such cases (see bit.ly/414oF9M). The Brief only announced improvements to HMRC's guidelines rather than any changes to the law, which is welcome.

Landmark ECJ decision in 1999

The most important historic case about VAT and mixed supplies was *Card Protection Plan v HMRC* (Case C-349/96), heard by the European Court of Justice in 1999. It considered whether services supplies made by Card Protection Plan Ltd (CPP) to its customers related to a standard rated supply of administration services; an exempt supply of credit card insurance; or a combination of both.

I referred to the case in my article to celebrate the 50th anniversary of our favourite tax (see '50 not out: the anniversary of VAT' in April 2023) but the main conclusions deserve to be highlighted. See ***Card Protection Plan Ltd***.

The most significant guidance in the CPP decision is probably the need to consider if it would be artificial to separate the individual supplies in a package. For example, if I buy a washing machine that includes a 30 page glossy brochure about how to use it, then I am only buying the washing machine and not a zero-rated brochure. However, if I buy a package that consists of a paperback novel and a pen, each item can be used independently – and, as a customer, I am buying the package because I want both the pen and the book. It is a mixed supply.

Other tribunal cases

VAT enthusiasts will recall the First-tier Tribunal case of *Ice Rink Company Ltd* [2020] UKFTT 350 about whether a company that charged children a standard rated fee to use a skating rink made a partly zero-rated supply when an extra amount was charged to hire out skates.

The sale or hiring of children's clothes is zero-rated by virtue of the Value Added Tax Act (VATA) 1994 Sch 18 Group 16. The case was won by the taxpayer but the judge highlighted that separate pricing – an extra charge to hire the skates – does not automatically create a mixed supply outcome; it is the overall package and customer perception that counts.

In the case of *Europcar Group UK Ltd* [2021] UKFTT 359, the challenge was to consider whether an extra fee

Key Points

What is the issue?
If a bundle of goods or services sold by a business are subject to the same rate of VAT – or all but one of the items in the package are incidental and can be ignored – the challenges of output tax apportionment will not be relevant. So, it is firstly important to identify when a mixed supply outcome is evident.

What does it mean for me?
HMRC has recently issued improved guidance in its manuals – and also a Revenue and Customs Brief – to help a business calculate how much output tax to pay in mixed supply situations. The guidance aims to 'encourage' a method based on retail selling prices for individual items but this is not compulsory.

What can I take away?
If a past method of apportionment is flawed and has overpaid output tax, a business might be able to adopt an alternative method for the last four years if there are good grounds for doing so. An error correction submission to HMRC can be considered.

CARD PROTECTION PLAN LTD: THE KEY FINDINGS

The key conclusions from the ECJ case of *Card Protection Plan v HMRC* to determine if there is a single or mixed supply are set out below:

- For a supply to be separate, it should be regarded as distinct and independent.
- A transaction that is a single supply from an economic point of view should not be artificially split into separate supplies.
- There is a single supply where one or of the elements constitutes the principal or dominant supply, while the other elements are ancillary to that principal supply.
- A supply is ancillary to the principal supply if, for the average consumer, it is not an end in itself but a means of better enjoying the principal supply. (The VAT treatment of an ancillary supply will follow that of the principal supply.)
- The assessment is made from the perspective of the typical consumer, not the supplier.
- Where there are two or more supplies and a single price is charged, it is necessary to apportion the amount.

to hire children's car seats at the same time as hiring a car was:

- a single standard rated supply of a 'car with children's seats'; or
- a mixed supply of a standard rated charge for hiring the car and a separate payment to hire the children's seats, which would be subject to 5% VAT.

The judge allowed the company's appeal, commenting that the two supplies were 'economically distinct' and the customer had 'a genuine economic choice' to hire the seat or otherwise.

Output tax apportionment

The legislation does not specify any method of output tax apportionment that must be applied by a business where there is a mixed supply outcome. The method must be fair and supported on a logical, calculated basis (VATA 1994 s 19). However, this is not the end of the story: if HMRC decides that a method is unfair and has resulted in an underpayment of output tax, an officer has the power to issue a retrospective assessment for the last four years based on their 'best judgment' (VATA 1994 s 73(1)).

There are two main apportionment methods:

Cost prices: If each item in a bundle of goods is purchased separately, an apportionment can be made based on these buying prices. For example, a business buys:

- a zero-rated book for £6; and
- a pen for £10 plus VAT.

The business will account for output tax on 1/3 of the VAT inclusive retail selling price when it is sold as a single package; i.e. 6/18.

Retail prices: The same calculation process as above is carried out but by using the selling prices of individual items.

The complication with both methods is twofold.

- Firstly, it is very difficult to use cost prices if part or all of the bundle relates to services rather than goods, as with the rail ticket example.
- Secondly, what will a business do if it only supplies items as a package and never on an individual basis?

In such cases, the business will have to use an alternative method that gives a fair and reasonable outcome. The method must be regularly reviewed to ensure it is still appropriate.

Revenue and Customs Brief 2/2023

HMRC issued a consultation paper in 2021 headed 'VAT and value shifting' and indicated that it would change the law to make it compulsory for output tax on mixed supplies to be apportioned according to individual retail selling prices. In my view, that would have created a big can of worms. A business could have fixed individual selling prices that were weighted in favour of the zero-rated/exempt part of the package, while fixing the prices so high that customers would only opt for the combined purchase option; i.e. the mixed supply. Anti-avoidance legislation would then have been needed.

The outcome of the consultation was to improve HMRC's published guidance and not amend the law with the issue of Revenue and Customs Brief 2/2023. There have also been well-written amendments to HMRC's VAT and Valuation Manual (see VATVAL03000 to VATVAL04300). Another reference point is VAT Notice 700 s 31.

The most important comment in the Brief is as follows:

> 'The changes (to the guidance) encourage businesses to first consider a selling price method, where appropriate and available, before considering a cost price method or any alternative.'

What does this mean in practice?

HMRC powers

If a business follows HMRC's recommendation to use an apportionment method based on retail selling prices, this reduces the risk of a future challenge. However, HMRC does not have the right to override a taxpayer's chosen method if it is fair and reasonable.

The updated guidance only gives HMRC's views about this tricky subject and is intended to avoid or reduce non-compliance by taxpayers. To quote from the policy manual VATVAL03700: 'Businesses are not obliged to use any of these methods and apportionment methods based on some other method should not be rejected out of hand.'

The manual also gives a clear instruction to officers dealing with mixed supply challenges: 'If you employ an alternative method you will need to explain why the example methods were considered inappropriate.' (Author's note: the 'example methods' relate to cost and selling price methods.)

Retrospective adjustment?

The Brief uses the word 'encourage' as far as a retail selling price method is concerned. Does this mean that a business could be faced with a big assessment going back four years if HMRC challenges an alternative method, perhaps based on cost prices? The answer should be a definite 'no'. It is a bit like government policy on alcohol consumption – we are encouraged to drink no more than 14 units per week but there is no fine or punishment if we drink more.

As a final challenge, what happens if your business thinks it has overpaid output tax on mixed supplies in, say, the last ten years because it has adopted a flawed method of calculation? There is no scope to adjust years one to six because they are out of time under the four-year error correction period but there might be a window of opportunity with the later years.

This issue is very helpfully dealt with by VATVAL04300 in HMRC's guidance. Here is a summary:

- You must be able to provide 'convincing evidence' to show why the previous method was unfair.
- Your new method must produce a 'substantially more accurate attribution of values than the old method'.
- A lower output tax liability is not a sufficient reason to justify a new method.

Conclusion

VAT recently celebrated its 50th birthday and there has been much agreement among advisers and authors that a reduced standard rate on all goods and services and the abolition of zero-ratings, exemptions and the 5% reduced rate supplies would be very sensible to simplify the tax for everyone. And, as a further argument in support of this strategy, the challenges of mixed supplies would also disappear.

That would be welcome, although I would miss writing about the twists and turns created by this fascinating subject. C'est la vie.

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Watch for the red flags

How to avoid R&D enquiries

We explain the steps you can take to avoid R&D enquiries under HMRC's new approach in 2023.

by Richard Edwards and Karen Evans

Key Points

What is the issue?
HMRC is trying to reduce the amount of fraud and error in the R&D tax relief system by drastically increasing the number of R&D enquiries and holding applicants to a much higher standard than had been applied before.

What does it mean for me?
Thanks to the subjective definition of R&D for tax purposes, establishing eligibility is the most important and difficult aspect of preparing a claim.

What can I take away?
Check your report for common mistakes. Don't overcomplicate the narrative, don't focus on uniqueness, and avoid overstating staff apportionments.

The volume of R&D claims has increased rapidly for years, thanks in part to unscrupulous firms offering SMEs 'guaranteed' claims and access to 'free money'.

HMRC is trying its best to tackle this and to reduce the amount of fraud and error in the R&D tax relief system, which is estimated to be £469 million (see bit.ly/3m9QzCj). In late 2022, HMRC seemed to adopt a bracing new approach to R&D enquiries, drastically increasing the number raised and holding applicants to a much higher standard than before.

All this means that R&D enquiries are now far more common, and much harder to win. Some of the reasons HMRC's case workers are rejecting claims are because they believe:

- the claimant company doesn't have a competent professional;
- the R&D has been subcontracted – even where contracts don't mention R&D at all; and
- there is insufficient evidence of an advance or technical uncertainties.

Because of this strict new environment, it is more important than ever to make sure that claims are technically accurate, and that the company would be credible and comfortable when explaining to HMRC how they consider their projects to qualify for the tax relief.

Start by establishing eligibility

Thanks to the subjective definition of R&D for tax purposes, establishing eligibility is the most important and difficult aspect of preparing a claim. It takes time to thoroughly explain HMRC's rules, and a certain amount of expertise and experience to map HMRC's abstract definition against a client's projects.

R&D for tax purposes is defined in the guidelines by the Department for Business, Energy and Industrial Strategy (BEIS) (see bit.ly/41kuZtV) and the Department for Science, Innovation and Technology (DSIT) (see bit.ly/3GkSzi2). This definition is used by HMRC, in conjunction with its Corporate Intangibles Research and Development Manual CIRD80000 (see bit.ly/2Lamjn2), to assess the eligibility of claims. It is a good idea to share this with clients, as HMRC often asks whether the claimant read and understood the definition of R&D before submitting their claim.

Yet many SMEs will have heard from less scrupulous R&D advisers that they can be very liberal in interpreting what can classified as R&D. They may have heard that almost anything can qualify for R&D tax relief, and that HMRC won't check their claim anyway. This can make it difficult to appreciate the need for a more rigorous process.

At this point, it's important to note that part of establishing eligibility also includes being upfront when the company does **not** qualify for the tax relief. This can be a difficult conversation, but one that cannot be avoided when acting in the best interest of a client without any qualifying work.

Once you are comfortable that company personnel understand the eligibility criteria and would present well if required to speak to HMRC, the next step is to speak to the individuals who have the most knowledge and experience of the projects.

For each project, the claim looks to explain:

- the technological or scientific baseline for the industry;
- the advance that the R&D achieved (or attempted to achieve); and
- the technical uncertainties (as defined by HMRC) that had to be overcome.

Each of these terms has a specific definition, detailed in the guidance. It's vital that advisers understand these, so they can explain what they mean in detail.

Write an effective R&D report

With HMRC raising the bar for applicants and their advisors, an effective report has never been more important. HMRC's caseworkers have a limited amount of time to read each report before deciding whether to open an enquiry. To avoid them doing this, your report needs to be clear and concise, so they can easily understand what the claiming did and why the work qualifies.

With HMRC's new 'additional information' forms to be mandatory from 1 August 2023, a well-structured report becomes key to answering those questions in the digital forms. As a minimum, your report should:

- provide details on each specific R&D project, rather than grouping them into themes;
- describe the industry baseline, advance and uncertainties relevant to each project; and
- list the competent professionals involved in each project.

When describing the baseline, bear in mind that HMRC will be looking for evidence that the competent professionals have scoured the public domain for relevant information and used this to further the project aims; and that competent professionals took sensible, logical steps towards a solution before the R&D started.

Claimants often don't include this information, leading HMRC to conclude that the boundaries of R&D were set too broadly and that the claim is not specific enough.

If they do question when R&D was deemed to have begun, it can be useful to outline:

1. work required to achieve the industry baseline (not eligible);
2. work that was complex and difficult, but which was still achievable using existing knowledge, tools and capabilities (also not eligible!); and
3. work conducted to develop something new and more advanced when standard methods proved to be ineffective.

By setting out the information in this way, HMRC can quickly see that the company knows about and can describe the industry baseline; has made (or attempted to make) an advance relative to this industry baseline; and has experienced technical uncertainties which could not be resolved by using readily available information or applying pre-existing industry-wide solutions.

Check your report for these red flags and common mistakes

There are lots of common mistakes that we see when reviewing claims on behalf of R&D advisors. Here's a few key ones to avoid.

Don't over complicate the narrative

Stay focused and concentrate on just the details you need to show HMRC how the R&D qualifies. A 25 page report is too much information! A caseworker has limited time to risk assess a claim, so they are more likely to open an enquiry if they can't quickly see why the claim qualifies. Extra details won't necessarily impress them, so focus on clarity rather than word count.

Don't use words like 'bespoke', 'custom' or 'unique'

None of these words prove that there is qualifying R&D activity. HMRC will often point out that work can be all these things without necessarily involving an advance in technology. This means that describing something as bespoke, or similar, raises the question of whether the client is claiming for a commercial advance rather than for something that is technologically new. To avoid this, focus less on 'uniqueness' and more on the baseline and how the client was trying to go beyond this.

In other words, ask the competent professionals why their solution was technologically better, not just different. Keep asking them to clarify this until you can confidently explain it in your report.

Avoid overstated or inaccurate staff apportionments

While HMRC's own examples include 100% apportionments, in practice these can be high risk. If you apportion staff at 100%, you are claiming that they spent every hour of every day working on the technical advance and uncertainties you've described.

Even in an SME which has exclusively worked on R&D projects and nothing else, it is very likely that staff will have spent time on non-qualifying activities, like researching the technological baseline, or trying existing and sensible approaches to solve key problems. It's best practice for apportionments to come from the client directly. You can help to facilitate this by asking for details of how everyone spent their time.

How to prepare for an enquiry (just in case!)

Preparing R&D claims can be complex and nuanced work, which is now riskier than ever. The key to a strong claim is giving HMRC what they need to assess the claim qualifies and you can do this by:

- helping company personnel to understand HMRC's specific definition of R&D;
- establishing which parts of a company's projects are eligible;
- writing a clear and concise report to support the tax relief claim; and
- avoiding red flags and common mistakes in the claim.

While this will help, nothing can guarantee an enquiry-free claim. In fact, HMRC has confirmed it is opening more random compliance checks, as well as those based on poor standards or unlikely SIC codes.

If you want to prepare yourself for an enquiry, download our free guide, 'How to handle an R&D enquiry: a complete guide to HMRC's most common questions, and how to answer them in 2023' at bit.ly/439BIrY.

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Building a new world
How to achieve net zero

We consider the practical issues that must be addressed to truly incentivise UK businesses and households to strive for net zero.

by Alun Oliver

The recently published Skidmore report, 'Mission Zero' – an independent review of net zero chaired by Rt Hon Chris Skidmore OBE MP – sets out the recommended actions for the UK to transition to its long stated aim of net zero greenhouse emissions by 2050 (see bit.ly/3o0yQO5).

The report repeatedly recommends reviewing the incentives for investment – both how HM Treasury incentivises decarbonisation via the tax system, and the range of capital allowances. By Autumn 2023, HM Treasury should have a clear policy of how the tax system, its incentives and reliefs should be utilised to steer UK industry down the 'green', energy efficient and low carbon route.

But it's not just about being 'green'. The report highlights the wider opportunities for growth, employment and economic prosperity that a low carbon UK could enjoy. The Office for National Statistics estimates the low carbon economy to have been worth £41.2 billion in 2020 (see bit.ly/3mH5EuN). There is a clear fiscal payback to the UK in leading the world through low carbon innovation and digital transformation.

Both industry and the government regard tax policy, specifically capital allowances, as a key tool in achieving a low carbon Britain. Through freeports, and before them enterprise zones and enhanced capital allowances, the government has sought to enhance investment and change behaviours.

The report also references a study from the National Institute of Economic and Social Research, which found that 'corporate taxes reduce investment in tangible assets and R&D. Mission Zero states that it is important that the government 'uses a balanced approach of tax incentives and disincentives to encourage economic activity that meets the dual objectives of growth and decarbonisation'.

Super-deductions

Skidmore considers the 130% accelerated capital allowances (and 50% special rate first year allowances) introduced from 1 April 2021 to 31 March 2023 for companies investing in qualifying new plant and machinery assets to have been about 'driving investment', as opposed to discouraging corporate delay in investment due to the then anticipated (and now confirmed) corporation tax main rate of 25%. Albeit first year allowances clearly reward greater investment with immediate and accelerated tax relief.

However, super-deductions finished on 31 March 2023 and were only available to UK corporate taxpayers, with the result that those operating as individuals or through partnerships – such as GP surgeries, architects or even tax advisers – were unable to benefit.

In the Budget, the Chancellor announced full expensing for three years. Companies incurring qualifying expenditure on new plant and machinery before 1 April 2026 will be able to claim either a 100% first year allowance for main rate expenditure (known as full expensing) or 50% for special rate expenditure, including lifelong assets. The Chancellor stated an ambition to make full expensing permanent. He also confirmed that the annual investment allowance would be set permanently at £1 million per year.

Enhanced or 100% capital allowances should clearly encourage greater investment by businesses, and the OBR forecasts that this might encourage some

Key Points

What is the issue?
By Autumn 2023, HM Treasury should have a clear policy of how the tax system, its incentives and reliefs should be utilised to steer UK industry down the 'green', energy efficient and low carbon route.

What does it mean for me?
Both industry and the government regard tax policy, specifically capital allowances, as a key tool in achieving a low carbon Britain. Through freeports, and before them enterprise zones and enhanced capital allowances, the government has sought to enhance investment and change behaviours.

What can I take away?
A truly joined up approach to tax, energy and housing policy, consistently applied and set out over a long-term horizon, would surely help deliver a low carbon future for the UK by 2050, or preferably sooner.

3% year on year growth in investment by UK business. However, the timescales for these changes remain a factor for consideration. With the ambition to achieve the 'green' goal of net zero by 2050, a coherent programme of enhanced tax reliefs that will be in place until (or beyond) that date remains something we can only wish for.

Large investment and capital projects – such as building a new factory, logistics centre or power station – take years to

achieve. Businesses fail to factor short-term incentives into their business planning without longer-term certainty. The changes or improvements needed for net zero – energy efficiency, carbon reduction and sequestration, water and waste reduction – are largely driven by global multinational companies. Uncapped allowances, carefully targeted, would accelerate the impact these businesses have in the UK and elsewhere.

All too often in the recent past, polluting and environmentally dangerous activities have simply been 'offshored' to other countries that are less willing or able to enforce the necessary standards. Policy decisions on tax incentives should try to ensure that global targets are achieved and not simply relocated. Any accelerated tax relief to UK businesses (whether domestic or part of multinational corporations) should consider their wider supply chain and global actions so as to 'ratify' their eligibility for enhanced tax savings by consistent carbon improvements – wherever they operate. Additionally, the government has launched a consultation on a UK 'carbon border adjustment mechanism' as part of its net zero strategy to ensure fair competition across international standards and pricing of decarbonisation requirements.

Enhanced capital allowances

Between April 2001 and March 2020, 100% enhanced capital allowances were used to encourage taxpayers to invest initially in energy efficient assets, and later also in water efficient technologies, including heating, ventilation and air conditioning (HVAC) systems, lighting and pumps. However, the complicated requirements for manufacturers to pre-register and prove their efficiency credentials against constantly evolving criteria made for a confusing and difficult regime that significantly under achieved its potential.

Linking tax incentives to independent gradings

A new programme of enhanced capital allowances targeted at 'low carbon' or 'net zero' technologies should have a recognisable metric linked to the outcome achieved. As I have previously written about in *Tax Adviser* (see 'Integral to investment' (December 2018)), linking the rate of writing down allowances to the building's energy rating or design performance should result in a clearer and 'independent' classification or rating.

Within the real estate sector, a number of different standards have sought to drive ever-increasing energy efficiency, including the Minimum Energy Efficiency Standards (MEES), British/European and International Standards (BS:EN:ISO), Energy Performance Certificates (EPC) and Display Energy Certificates. Building Regulations Part L has been a stalwart of UK building design but many consider that it has not kept pace with technology, and was never really designed to measure building performance.

However, other programmes use a system of ratings. BREEAM (the Building Research Establishment Environmental Assessment Method) (see bit.ly/3zSCnB2) ranks buildings from Pass (one star) to Outstanding (five stars) and provides an interim certificate against design criteria and full certification following a post construction review. NABERS (the National Australian Built Environment Rating System) is gaining significant momentum in the UK for commercial offices, using a ranking system from one star 'making a start' to six stars for 'market leading'. NABERS also requires annual monitoring to maintain and facilitate incremental improvement as subsequent works are undertaken.

The rating systems could be linked to accelerated writing down allowances. Projects that achieve assessments four stars with BREEAM or five stars with NABERS could be given, say, a 40% first year allowance, while those achieving top ranking could be given 60%.

Independent gradings could also be utilised to grant business rates relief; for example, giving enhanced reductions to buildings that improve their rating following a refurbishment project. Tax incentives would encourage both landlords and occupiers to ensure that old legacy properties are modernised with the most efficient and low carbon technologies.

Tightening regulations

The MEES regulations are continually tightening the requirements for the minimum energy efficiency ratings for both domestic (residential) and non-domestic (commercial) properties.

Since 2018, restrictions have applied to new leases if an EPC certificate is graded F or G (although landlords have been able to extend existing leases). However, Skidmore is encouraging the government to legislate by 2025 for all existing (legacy) non-domestic buildings, both rented and owned, to be EPC B by 2030. It should also require all new buildings from 2025 to have a minimum EPC B rating. As a surveyor, part of me wonders at the practicality of *all buildings* achieving ever improved energy ratings, irrespective of use.

Various surveys have found that many commercial landlords are unaware of these changes, while others are simply slow to improve their properties. However, all those with EPC grades of F or G (estimated to be 18% of all commercial properties) are no longer legally lettable since 1 April 2023, unless the property is exempt. They will either have to sell or undertake energy and insulation improvements to obtain a higher EPC certificate before any continued rental is possible. Where the landlord is a UK taxpayer, much of the necessary improvement works will typically benefit from capital allowances relief, helping to ease the overall cost.

Freeports

Freeports (known as 'green freeports' in Scotland) are designated geographic areas that have a range of fiscal incentives to encourage development and growth within the freeport and its immediate vicinity.

The English freeports came into full effect between November 2021 and July 2022, following extensive consultation. They benefit from reduced employment costs through employer national insurance savings, lower business rates and stamp duty land tax, and simplified customs and planning requirements.

They also receive boosted capital allowances. Structures and buildings allowances are accelerated to 10% per annum (instead of the default 3%), and plant and machinery benefits from a 100% first year allowance (a new interation of enhanced capital allowances!). These are intended to give the owner or investors a faster return against their investment in developing these zones. Few 'green' criteria have been explicitly factored into the legislation, though was a condition of the relevant Scottish applications.

Unfortunately, the biggest issue freeports face – including, currently, the Scottish green freeports and the two new freeports in Wales (announced in March 2023) – is that these boosted allowances are dependent upon the buildings being brought into use before, or expenditure incurred by, 30 September 2026 respectively.

Investment zones

Also confirmed in the Spring Budget was the creation of 12 new investment zones across the UK – with eight to be in England and the remaining four in Scotland, Wales and Northern Ireland.

These investment zones are designed to harness local strengths to drive productivity and leverage the bottom-up local talent, knowledge and networks to deliver sustainable growth that benefits local communities. They are to be rooted in partnership between central and local government, research institutions (universities) and the private sector, in order to realise the potential of our cities and regions. Additionally, the government's prospectus identifies five priority sectors: digital and technology; green industries; life sciences; advanced manufacturing; and creative industries.

Whilst most of the fiscal incentives are similar to freeports, the individual investment zones will receive total funding of £80 million over five years.

ENERGY PERFORMANCE CERTIFICATES (EPC): THE CURRENT STANDARDS AND PROPOSED IMPROVEMENTS

	Domestic properties (unless exempt)	Non-domestic properties (unless exempt)
April 2018	Only **new** lettings: EPC E minimum	Only **new** lettings: EPC E minimum
April 2020	All leasing (including renewal): EPC E minimum	No change
April 2023	No change	All leasing (including renewal): EPC E minimum
2025	No change	All new buildings: proposed EPC B minimum
2028	All tenancies: proposed EPC C minimum	
2030	All tenancies: proposed EPC B minimum	All buildings (rented or owned): proposed EPC B minimum
2033	All new homes sold: proposed EPC C minimum	

The investment zones can use this funding flexibly between spending and a single five-year tax offer, scalable based on number of sites. This would consist of:

- £35 million flexible spend, split 40:60 between resource spending (RDEL) and capital spending (CDEL), to use across a portfolio of interventions based on the opportunities of each cluster; and
- tax incentives, which can cover up to 600 hectares across up to three sites, lasting for five years. Where places do not opt for the maximum tax offer of 600 hectares, tax incentives can be exchanged for a greater amount of spend.

Legacy housing stock

New design standards must drive through changes to new buildings being constructed to reduce both their own carbon footprint and the embodied carbon throughout the relevant manufacturing and supply chains. However, the MEES regulations and EPC requirements (as set out above) also aim to address the vast legacy portfolio of existing properties (both residential and commercial).

The Construction Products Association stated in their evidence to Skidmore it supports the proposal for the creation of a Retrofit Hub to be supported by industry and government and Innovate UK, hoping that this could provide technical, scientific and business focus.

Suez R&R UK Limited commented that 'policy and regulation in this area is incomplete, and often has a record of inconsistent application and maintenance which undermines both investment … and fails to consistently reinforce communications and messages that are required to change behaviour in general'.

One example of this is the current VAT regime on energy saving materials (ESM). Since April 2022, a temporary zero VAT rate applies to a wide range of energy and insulation improvements. However, there is no just and reasonable apportionment where the ESM works are undertaken within a wider refurbishment project as a 'single supply'. This restrictive approach completely undermines the stated policy ambition to incentivise the take-up of ESMs in line with the government's net zero objectives.

However, the recent Budget publications included a consultation on ESM and how these could be improved ending 31 May 2023.

In conclusion

Bold and long-term tax incentives, clear unequivocal capital allowances and targeted first year allowances could help change our attitudes and behaviours to achieve net zero carbon emissions. A truly joined up approach to tax, energy and housing policy, consistently applied and set out over a long-term horizon, would surely help deliver a low carbon future for the UK by 2050, or preferably sooner.

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Working for yourself

Flying solo?

Life as a sole practitioner has always been attractive to some tax advisers. We ask some of those who have already taken the leap to share their advice.

by Angela Partington

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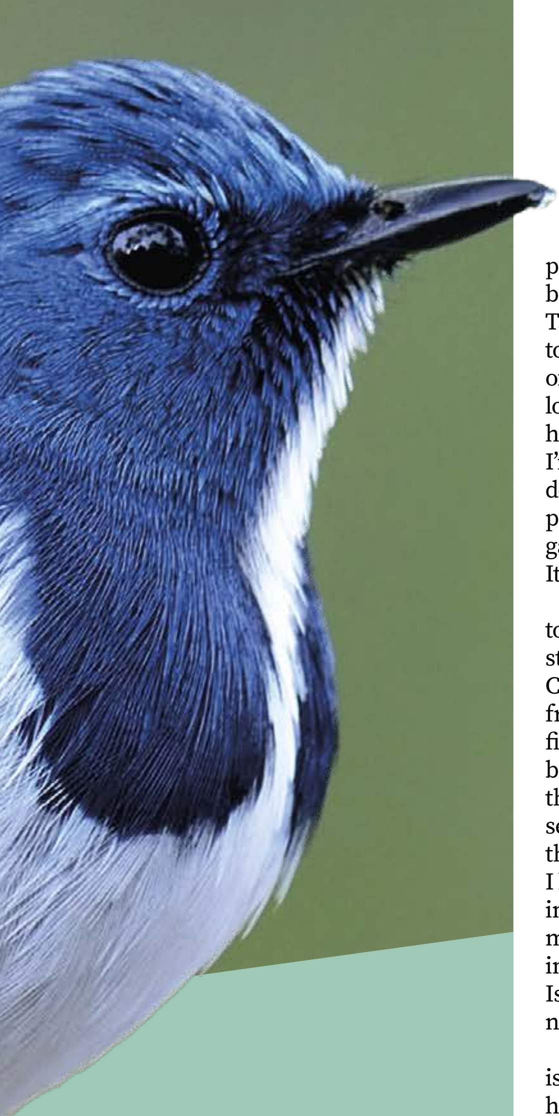
Key Points

What is the issue?
Currently, 8% of the members of CIOT and ATT work as sole practitioners – and doubtless others are considering the leap to self-employment.

What does it mean for me?
Many sole practitioners launch their careers with a few clients already lined up but your business will only continue to be successful if you can keep the work coming in.

What can I take away?
You need broader skills than your tax expertise to set up as a sole practitioner. You will be effectively running your own business and must be prepared to take on the broader business skills required by any organisation.



The last few years have driven many of us to take stock of our lives – from assessing the way our careers are unfolding to daydreaming about where we would like to live while we pursue them! The professional opportunities in tax – as we all know – are many and varied. But something about the complexities of the Covid outbreak, coupled with the unexpected requirement to work remotely for an extended period of time, has led some of us to consider a complete change of focus.

Currently, 8% of the members of CIOT and ATT work as sole practitioners – and doubtless others are considering the leap to self-employment. Everyone working for themselves will have a unique experience but there are some common issues it is essential to consider.

We have asked some of the sole practitioners who are closely connected with CIOT and ATT to share their experiences about the benefits and challenges that decision can bring.

Why make the transition?

There seem to be as many motivations for taking the leap to work on your own as there are sole practitioners. Perhaps that shouldn't be surprising but it does emphasise how it allows advisers from a wide range of backgrounds to find their own niche.

Sofia Thomas, set herself up as a sole practitioner in 2016 as Thomas Consulting, before moving on to launch Juno Sports Tax about 18 months ago. When we spoke to her, she was honest about the difficulties of juggling being a parent and working long hours, sometimes being out of the house for up to 14 hours a day. 'I thought, if I'm going to work this hard, I might as well do it for myself.' She had watched both her parents run their own businesses, which gave her more confidence, she added. It was a decision she has never regretted.

Claire Shelemay took the opportunity to set up her practice in Israel, where she started work as a sole practitioner in Crownstone Consulting. She had moved from London to Israel for personal reasons five years earlier, travelling back and forth between the two places to bring work into the UK market for her employer. 'After my second maternity leave, I decided to take the plunge and start my own company. I have a niche of dealing with Israelis investing into the UK market or physically moving to the UK or moving their business interests there. Because I'm based in Israel, I thought that I've got a good network out here.'

Sometimes, though, it can seem as if it is just meant to be. Mala Kapacee now runs her own tax investigations consultancy, London Tax Network Ltd. She hadn't been planning to set up as a sole practitioner but when she was clearing out her desk at 4pm on her last day in employment the phone rang. 'It was a client I'd had from a different firm about five years before, who needed some help. When I said I didn't work there any more, they gave me their number and asked me to call. And that was my first client.'

Preparing for the culture shift

It won't come as a surprise, but the biggest impact of setting up as a sole practitioner is the challenge of working alone. Whether you are working at one of the Big Four firms or a small local practice, you will be used to being surrounded by others – colleagues, contacts and friends – on a daily basis. When you are tackling a tax problem, your colleagues can provide you with information, expertise, a fresh perspective and a sounding board while you talk things through. Adjusting to the sudden loss of this was an issue for everyone we interviewed.

David O'Keeffe worked his way up to the position of tax partner at KPMG before he left 11 years later, and that culture shift was one of the first things he noticed. 'I've often said that the thing I missed was just being able to swivel your chair around and say to somebody, "What do you think about this issue? Do you think I've got this right?" You are literally on your own, and that was a big culture shock.'

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www.taxadvisermagazine.com/podcasts: Deloitte's Amanda Tickel tackles the complex issues of the environment and taxation.

Everyone advises that maintaining a support network is of vital importance. Katherine Bullock, a specialist tax barrister, took the decision four years ago to move to Yorkshire and set up her own chambers. Perhaps because life as a barrister had been some preparation for working as a sole practitioner, she knows how important it is to maintain those networks of contacts in your new undertaking. 'Don't underestimate the value of your colleagues and the networks where you share your knowledge and expertise. In so many ways, that network is still there if you decide to practice on your own – it's just a question of tapping into it.'

Mala Kapacee agrees, as the nature of her work means that she can find herself working in many different areas of taxation. 'As a sole practitioner, you need a network. In tax investigations in particular, you find yourself working across so many different aspects of tax that it's not possible to be technically brilliant at them all. You want to be able to reassure clients that they can ask you anything – and that if you don't know the answer yourself, you can guarantee to find someone who does.'

The ability to build and maintain a circle of contacts in the field is one of the most vital steps to take when you're setting up as a sole practitioner. Obviously, the CIOT and ATT – both through their central support and local branch networks – can be invaluable in helping you to make this shift.

The practicalities...

As well as a support network, there are some other basics that you will definitely need in place as you transition to self-employment. The one requirement that everyone seems to agree on is the need for some financial security while you are establishing yourself as a sole practitioner.

Sofia Thomas recommends that you have three months' rent or mortgage costs set aside before you make the leap, which seems to be the consensus for a minimum starting point. Even if you take the leap with a thriving client list, you will find it reassuring to know that you have some ballast if you hit an unexpected quiet patch.

Another decision is the location of our place of work. Homeworking is something that we have all become much more comfortable with since our collective experiences of Covid. With Zoom and Microsoft Teams, our ability to work remotely has increased almost exponentially. And although many jobs in taxation – though by no means all – are based in London or other major cities, this is no longer a requirement for the sole practitioner. Katherine Bullock relocated to Yorkshire when she set up her own chambers. 'Everything was online and it became apparent that you didn't need to travel to a particular place to practice.'

Some practitioners prefer to set themselves up in an office outside their home, although many choose to work from a home office. As David O'Keeffe recalled, 'I did look into the prospect of renting office space and then realised, what's the point? You work on your own, whether you work in an office or at home.' What is more important, he says, is the need to be self-disciplined.

When you work for an organisation, a certain amount of discipline is 'imposed' on you. If you work for yourself and miss deadlines, no one is going to chase you but your clients. Most tax advisers contemplating the move to sole practitioner will almost certainly have a very solid work ethic, of course. You should remember, though, that the need to regulate your time works in more than one direction. As David O'Keeffe put it: 'It works the other way as well. You've got to be disciplined enough to take time out from the work and have some free time.'

The skills beyond tax

You need broader skills than your tax expertise to set up as a sole practitioner. You will be effectively running your own business and must be prepared to take on the broader business skills required by any organisation.

'I'm always trying to improve on how you best monetise your skill,' explained Sofia Thomas. 'That's a gap that isn't taught in schools, it isn't addressed in professional exams. So where do you get that knowledge from? We all know how to work in tax but you also have to manage the business that you're working in. You need to want to learn and understand that skill as well.'

The lack of back office support really struck David O'Keeffe in the early days: 'It's credit control, all the money laundering supervisions, the know your client checks, the money laundering checks. It might be obvious but when you're a sole practitioner you have to do everything and that was a bit of a shock. It sometimes still is!'

Mala Kapacee agrees: 'In one of the big firms, you don't always see what goes on behind the scenes. As a business owner, you have to do the engagement letters and the billing. And there will be no one to tell you how many pens to order!' She sets aside fixed times in her calendar year to tackle certain essential tasks, such as her anti-money laundering training and indemnity insurance.

> **Some of the greatest benefits to draw from life as a sole practitioner are the freedoms open to you.**

You will need at least some minimal IT skills to keep things running smoothly but may benefit from some broader experience. Claire Shelemay built her own website when she set up as a sole practitioner. 'I actually enjoyed doing that,' she said. 'When you're building something for yourself, you know what you're passionate about and what you're trying to communicate.'

Marketing and promotion

Perhaps the crucial non-tax skill, however, is marketing your services to ensure a regular run of business. Many sole practitioners launch their careers with a few clients already lined up but your business will only continue to be successful if you can keep the work coming in.

Equally, though, it's important to remember that as a sole practitioner you can only manage a certain quantity of business. Don't take on everything you're offered if it means unmanageable pressure or 14 hour days!

Marketing is perhaps as much an art as a science. David O'Keeffe explained how he had to learn to strike the right balance: 'There were times early on when it was like a rollercoaster of masses of business development. But then the work comes in and you can't do any business development because you're doing all the work. And then the work's finished so you start on business development again. You then have to evolve a way of keeping the work flowing in at a level that you can manage and pays the bills.'

Some of us find that a real benefit of working as a sole practitioner. 'I enjoy the business development,' says Claire Shelemay. 'You can build brand awareness through things like writing articles. You need to build a network, build relationships, keep up those relationships, attend events. The business skills – the soft skills – are very important.'

The benefits

Some of the greatest benefits to draw from life as a sole practitioner are the freedoms open to you. You have control over the work you will take on and the areas you choose to specialise in. That intellectual freedom is something that has definitely attracted Katherine Bullock. 'I like the freedom of it – the ability to choose exactly what work I will take on and what work I won't. It's the freedom to control my time, to control my work, to focus on the areas that really interest me and to take the time that I want to over it.'

There are other more practical freedoms too, of course. Everyone spoke of the more personal benefits that this route offered to them. Mala Kapacee has taken the opportunity to take law exams and has been enjoying the opportunities for development that might have been difficult when she had to be mindful of time sheets. But there are also personal freedoms, as she explained: 'If I've got a quiet day, I'm not chained to my desk for seven hours. I can do things I enjoy and spend time with friends and family. And for me, that level of flexibility and independence is what I want in life. I don't feel like work takes over, and because of that the work becomes so much more fun. I might end up preparing a presentation at the weekend, but it's something I enjoy doing.'

In short, you need to carefully weigh up the pros and cons, and see if it is a lifestyle and career that would work for you. As Katherine Bullock said: 'You need to think very practically about it. You need to think commercially about it. What are you going to do? How much will things cost? Can you support yourself? Where will your work come from? How will you give a professional service? The more time you spend planning, the easier it will be to start – but eventually you just need to jump in and see how it goes.'

She did have one final piece of advice – an old proverb told to her by a friend who was making a similar move. 'Birds don't question the branch they stand on because they trust their wings.' If you have confidence in your own abilities and take the leap, hopefully you too will land on your feet.

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Defined benefit pension schemes
The balance of transfer pricing

We explore the impact of a defined benefit pension scheme on transfer pricing, and how the sound application of arm's length principles can help to navigate the complexities.

by Ben Semper and Larisa Gordon

Key Points

What is the issue?
The Pension Schemes Act 2021 gives enhanced and simplified powers for The Pensions Regulator to require entities associated or connected to a sponsor of a defined benefit pension scheme to make payments to a scheme. Criminal offences have also been introduced which apply to directors, trustees and wide stakeholders (including advisors).

What does it mean to me?
Certain corporate activity could adversely affect or materially reduce the financial resources supporting defined benefit pension schemes. Additional governance is therefore needed around transfer pricing, corporate reorganisation and mergers and acquisitions.

What can I take away?
The risks associated with funding defined benefits can give rise to transfer pricing challenges. A transfer pricing policy, by determining how a company is remunerated for inter-company arrangements, can also be critical to enabling those accruing benefits to be funded by an employer.

The complexities surrounding transfer pricing and defined benefit pension scheme arrangements are not new. However, these have tended to arise only when pension liabilities crystallise. Liabilities can crystallise when an employer ceases to employ anybody who is eligible to join a defined benefit scheme (and therefore leaves the scheme), at a time when at least one other person continues to employ eligible employee(s). Under Pensions Act 1995 s 75, the employer leaving the pension scheme will then become liable for their share of the pension scheme's liabilities (known as a Section 75 debt). Issues with pension liabilities also arise when parties are grappling with deficits in the context of merger and acquisition activities.

The key change since the Pension Schemes Act 2021 came into force is that employers must now consider their general business activities more closely to avoid compromising schemes and

thereby potentially leading to criminal prosecution and/or unlimited fines.
In light of the Pension Schemes Act 2021, along with an environment where tax authorities continue to be active in transfer pricing interventions, the interaction between transfer pricing and defined benefit positions might be encountered more regularly.

The Pension Schemes Act 2021: a brief summary

We summarise below the key provisions of the Pension Schemes Act 2021 to enable you to better understand the interactions with transfer pricing.

Increased powers for The Pensions Regulator

'Anti-avoidance' (or 'moral hazard') powers: The Pensions Regulator has two main powers which can be used in certain circumstances against an employer of a defined benefit pension scheme (and those associated or connected with such an employer). These are the power to issue:

- contribution notices, which require the employer to make contributions to the defined benefit pension scheme; and
- financial support directions, which require the employer to put in place financial support for the scheme.

Information gathering: The introduction of the Pension Schemes Act 2021 has extended The Pensions Regulator's information gathering powers. This gives it greater access to information sources, including reports, interviews and inspections.

Notifiable events: As well as The Pensions Regulator having the power to investigate and gather information, there are certain circumstances in which the employer (and in some cases a guarantor of an employer) needs to notify The Pensions Regulator and the trustees of activities. Currently, the fining regime for non-compliance has gone from a maximum of £50,000 to £1 million, with criminal sanctions for providing false or misleading information. Over the next year, we expect to see legislation that has stricter consultation requirements.

Criminal offences

Avoidance of employer debt: This can occur where a person (i.e. anyone regardless of connection with a scheme or sponsoring employer) without a reasonable excuse, acts or engages in a course of conduct (or fails to act) with the intention of:

- preventing the recovery of the whole or any part of a debt which is due from the employer in relation to the scheme on an employer's exit;
- preventing such a debt becoming due;
- compromising or otherwise settling such a debt; or
- reducing the amount of such a debt which would otherwise become due.

Conduct risking accrued scheme benefits: This can occur where a person commits an act or engages in a course of conduct (or fails to do something) that detrimentally affects, in a material way, the likelihood of accrued scheme benefits being received. This applies where that person:

- knows (or should have known) that the act or course of conduct would have that effect; and
- does not have a reasonable excuse for engaging in such conduct.

> **The Pension Schemes Act 2021 has extended the Regulator's information gathering powers.**

The Pensions Regulator has the power to issue financial penalties in respect of these new powers, and there are new offences subject to criminal sanctions. For example, an offence – or aiding or abetting an offence – potentially carries a seven-year imprisonment and/or an unlimited fine. Providing false or misleading information during an interview, when notifying The Pensions Regulator or during an inspection, can result in an unlimited fine and/or two years' imprisonment when the person reasonably believes The Pensions Regulator will rely on such information. The Pensions Regulator suggests, however, that the criminal powers will only be applied to 'the most serious examples of intentional or reckless conduct'.

It should be noted that most of the criminal sanctions detailed above have equivalent civil penalties for individuals of up to £1 million. We expect these civil sanctions exist because they are likely to have a lower burden of proof to enforce them.

Transfer pricing and defined benefit pension schemes

In broad terms, actuarial gains and losses on the re-measurement of defined benefit liabilities, and the return on plan assets of a defined benefit scheme sponsor, are not recognised in its profit or loss statement. If a defined benefit pension scheme does not meet its statutory funding objectives, additional employer contributions may be required in later periods. Alternatively, the performance of the scheme may reduce future employer funding requirements.

These risks give rise to potential timing differences between the period in which the scheme benefits accrue (i.e. the period in which the employee carries out their duties) and the periods over which the total costs of providing those benefits are recognised and paid for by the employer.

For transfer pricing purposes, this risk potentially should be allocated to the parties to a transaction and represented in the transaction price. For example, a service provider provides a defined benefit pension scheme for its employees but is characterised as a 'limited risk' entity. The greatest functional control over the risks related to the service provision and the financial capacity to bear those risks should be with the counterparty; i.e. the service recipient. It may therefore be appropriate to allocate the financial upside/downside of the defined benefit risk to the service recipient for transfer pricing purposes.

A transaction net margin method with a cost based profit level indicator (i.e. a return on total cost method) may in these circumstances be an appropriate method to apply to the service provider. The transfer pricing conclusion may simply be that the defined benefit costs as they arise, plus a margin, should be charged by the service provider. The impact of deferred defined benefit costs on the value of the service provided at any particular time might be ignored for practical purposes or explicable considering this risk is allocated to the service recipient.

On the other hand, if an entity with a defined benefit pension scheme is an entrepreneur within a value chain, it should be exercising the most control over the risks and have the greatest financial capacity to bear those risks. The upside/downside risks of the defined benefit pension scheme would generally therefore be borne by that entity.

So far so straightforward?

Complications can start to arise; for example, where a transaction net margin method with a return on sales is applied to a tested party, such as a 'routine' distributor, with a defined benefit pension scheme. Any volatility in the costs for the distributor in maintaining the defined benefit will typically flow back to the counterparty to the transaction. This may be through reducing the value of goods sold. In extreme cases, net contributions might have to be made by the principal in order for the distributor to achieve the target margins. This 'floor and ceiling' approach to the transfer pricing policy for the distributor may increase the risks of

enquiry or challenge for the counterparty if this causes material financial volatility or losses for them. We also note that there can be divergence between the quantum of cash contributions to the defined benefit versus the associated accounting charges. We have typically seen HMRC follow an approach where the accounting figure is used in service fee calculations.

Cases involving significant defined benefit risk may be good candidates for advance pricing agreements (considering too the UK's complexity threshold for admittance into advance pricing agreements). This may provide certainty, particularly for the entity effectively bearing defined benefit risks. Consulting with the pension trustee may also provide comfort relating to Pension Schemes Act 2021 around the arrangements.

We would note also that the realisation of defined benefit risks may result in a divergence between the transfer pricing method applied for direct tax purposes and the method needed for customs valuation purposes.

A business which has undergone a functional transformation from a limited risk entity to entrepreneur (or vice versa) also faces complexity where scheme costs crystallise after employees' duties have been performed. Mapping scheme members and costs, and apportioning those costs to before or after the transformation periods, provides a basis for determining how additional scheme costs should be allocated within a group. Cases such as this have arisen in a tax enquiry context.

To complete the picture, legal documentation to govern the contractual arrangements should be tailored to take all the above into account.

Defined benefits and restructuring

Since the introduction of Pension Schemes Act 2021, it is even more critical that risks to accrued scheme benefits and employer defined benefit debts are managed when undertaking restructuring. Chapter IX of the OECD's Transfer Pricing Guidelines (the transfer pricing aspects of business restructuring) may be of assistance here, particularly considering the realistic options available: compensation for the restructuring itself, the valuation of assets transferring and the post restructuring remuneration.

> **Mapping scheme members and costs provides a basis for determining how additional scheme costs should be allocated.**

Applying arm's length principles rigorously may support the reasonableness of a course of action for Pension Schemes Act 2021 purposes. So even if mandatory UK transfer pricing principles do not apply (e.g. for SMEs), observing arm's length principles and documenting transactions appropriately could give protection should an incidental detriment to a scheme arise at a later date. Better still, transfer pricing principles and documentation may facilitate communication and consultation with trustees about the basis for a transaction before proceeding.

Care is also needed in the context of merger and acquisition activity to ensure that the defined benefit sponsor making any scheme recovery payments to address a scheme's shortfalls, or meeting liabilities under Pensions Act 1995 s 75, is doing so wholly and exclusively for the purposes of its trade (or non-UK equivalent).

If it is not the entity employing the scheme members, it may otherwise be making a 'chargeable provision' for transfer pricing purposes to another entity which should be remunerated.

Defined benefits and debt

The raising of finance, granting or extending of security and early repayment of loans also need to be reviewed through the specific lens of Pension Schemes Act 2021. The presence of a defined benefit pensions scheme should also be an economic factor when determining the amount of a loan (and/or guarantee) in an intra-group context.

Of particular relevance in the case of the extraction of cash by way of loan from an entity with a defined benefit may be whether the loan would have been made at all in the absence of the special relationship between the parties. Whilst observing arm's length principles could provide Pension Schemes Act 2021 safeguards, consultation with the pension trustees would always be recommended for material transactions.

Conclusion

Arm's length principles – including considering the realistic alternatives before taking a course of action and the allocation or controls over risks – can reduce Pension Schemes Act 2021 risks. Supporting documentation should be contemporaneous to the particular transaction, whereas transfer pricing is often tolerant to ex-post adjustments (or performance adjustment) and documentation. Pension trustees should therefore be consulted appropriately when reviewing existing or considering new arrangements.

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1966 and all that
A yellow card for IR35?

The recent case on IR35 involving the footballer and pundit Gary Lineker could have identified a glaring gap in HMRC's defence.

by Keith Gordon

Key Points

What is the issue?
For the tax years 2013/14 to 2017/18, HMRC concluded that the work carried out by Mr Lineker for the BBC and BT Sport were caught by the IR35 rules and determined that the GLM partnership should have accounted for PAYE on its income from those engagements.

What does it mean for me?
An application was made on the partnership's behalf to vary the grounds of appeal. The arguments turned on the Partnership Act 1890 s 5, which provides that partners act as agents of the partnership.

What can I take away?
Pending any appeal by HMRC (or a change in the legislation), it would be worth ensuring that the worker is at least one of the signatories in each contract for his or her services. In other words, that administrative detail should not be left solely to another partner.

Ever since the infamous announcement following the 1999 Budget, the so-called IR35 legislation has rarely been outside the headlines so far as tax advisers are concerned. And, over the past four years or so, they have attracted far wider attention as a result of HMRC's campaign focusing on radio and TV presenters, many of whom are household names.

The purpose of the legislation is to ensure that the tax consequences of employment (essentially, the obligation to deduct PAYE and to account for National Insurance contributions) are not avoided if an intermediary is interposed between the worker (the putative employee) and the engager of the worker's services (the putative employer). This statutory condition is found in the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 s 49(1)(b). Typically, that intermediary will be a limited company but the legislation provides that it could also be 'a partnership or unincorporated body of which the worker is a member'.

The IR35 legislation recognises that many workers providing their personal service would ordinarily be considered to be self-employed. These are cases where, for example, a self-employment business is incorporated (or simply carried out through the medium of a limited company). In such cases, the legislation does not bite. This is because the legislation contains a further condition so that it applies only if the underlying relationship between the worker and the engager would, under common law, amount to an employment (i.e. if one


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were to exclude the intermediary). This condition is found in s 49(1)(c).

The question of who is an employee has vexed courts and tribunals for decades and there is no quick answer. As last year's Court of Appeal decision in *HMRC v Atholl House Productions Ltd* [2022] STC 837 makes clear, a multi-factorial approach is necessary. That requires 'the identification and overall assessment of all the relevant factors present in the particular case'. Furthermore, as the exercise is ultimately evaluative, different compositions of a court or tribunal can legitimately reach different conclusions on the same facts. This explains why similar cases have led to seemingly inconsistent results.

The inherent uncertainty of IR35 cases perhaps explains the background to the case of *Gary Lineker and Danielle Bux t/a Gary Lineker Media v HMRC* [2023] UKFTT 340 (TC).

The facts of the case

Gary Lineker was a successful footballer in the late twentieth century and has since become established as one of the presenters of BBC's Match of the Day programme. He also provides services to BT Sport.

His services were provided via a partnership known as Gary Lineker Media (GLM), in which Mr Lineker and his first wife were the two partners. Following their separation in 2006, the GLM business was carried on by Mr Lineker as a sole trader. GLM became a partnership again when Ms Bux (Mr Lineker's second wife) was introduced as a partner on 1 August 2012.

For the tax years 2013/14 to 2017/18, HMRC concluded that the work carried out by Mr Lineker for the BBC and BT Sport were caught by the IR35 rules and determined that the GLM partnership should have accounted for PAYE on its income from those engagements. It looked as if Mr Lineker was going to join the increasing list of well-known celebrities arguing that their relationship was one of self-employment rather than employment. In other words, a well-trodden path towards a debate on the effect of s 49(1)(c) was likely to be followed.

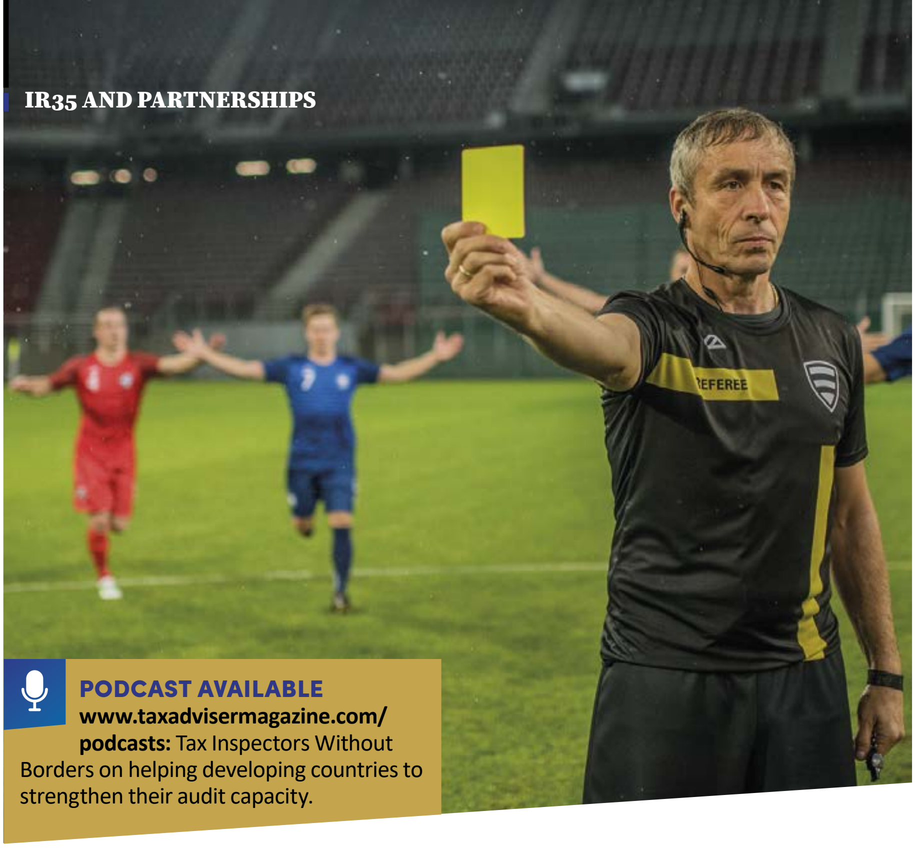
However, in March 2022, an application was made on the partnership's behalf to vary the grounds of appeal. In particular, two new arguments were based on the wording of s 49(1)(b):

1. An ordinary partnership (as opposed to a limited liability partnership) could not be treated as an intermediary, at least in England. This was because English partnerships are not legal entities separate from their members. In other words, the provisions of s 49(1)(b) did not catch English partnerships.
2. Even if English partnerships were within the contemplation of s 49(1)(b), that statutory condition was still not met because Mr Lineker's services were in fact 'provided … under a contract directly between the client and the worker'.

These additional arguments, if upheld, would represent a knock-out blow to HMRC's case. Furthermore, as self-contained issues (involving few disputed facts) the points could be addressed relatively quickly, at least in contrast to a full hearing which would be required to examine the nature of Mr Lineker's relationships with the BBC and BT Sport, and his wider services. As a result, the tribunal decided that it would be appropriate for these two additional arguments to be addressed as a preliminary matter. That preliminary matter was heard at the end of February.

The First-tier Tribunal's decision

The case came before Judge John Brooks. He set out some of the background facts relating to the creation of the partnership and the contracts under question. He noted that some of the contracts were signed by Mr Lineker alone and others were signed by both partners.



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In relation to the first question, the Judge concluded that ordinary English partnerships were intended to fall within the definition of intermediary, notwithstanding the fact that they do not have any legal identity separate from their partners. He referred to ITEPA 2003 s 52, which expressly deals with partnerships and the additional conditions that need to be met in such cases. He also referred to the Income Tax (Trading and Other Income) Act 2005 s 164, which deals with the computational consequences of such partnerships being within the IR35 rules.

The Judge also referred to the infamous IR35 press release itself, which stated the intended scope of the rules, being arrangements put through 'an intermediary – such as a service company or partnership'.

In relation to the second point, however, Mr Lineker had more success. The arguments turned on the Partnership Act 1890 s 5, which provides that partners act as agents of the partnership. In *Memec Plc v IRC* [1998] STC 754, this section was explained as providing that partners therefore carry on partnership business both as principals and as agents of the partnership. By applying this principle, the Judge held that each of the contracts entered into by Mr Lineker (either alone or with his then wife as partner) amounted to 'a contract directly between the client and the worker'. As a result, the condition in s 49(1)(b) was not met and, therefore, IR35 could not apply.

Commentary

In relation to the partnership point, it could be said that the references to ss 52 and 164 do not in themselves prove that ordinary English partnerships fall within the definition of intermediary. If Mr Lineker's arguments were correct, those sections would adequately apply to the narrower definition of partnership being contended for. However, despite those comments, it is my firm view that the intention of Parliament would have been to bring all partnerships within the scope of intermediary and that the reference to 'partnership' was not intended to exclude ordinary English partnerships.

In short, I agree with the First-tier Tribunal's decision on this point. As the Judge made clear, partnerships were within the terms of the original press release back in 1999 and, at that date, LLPs did not exist. (The LLP legislation was enacted the next year, gaining Royal Assent a few days before the first IR35 legislation was enacted in the Finance Act 2000, but did not take effect until the following year.)

In relation to the second point, the Judge recognised that his conclusion 'might appear inconsistent' with his conclusion that partnerships were within the scope of the IR35 legislation. However, he explained that the decision he reached depended on the fact that Mr Lineker signed each of the contracts. Had only another partner signed them, then the s 49(1)(b) condition would have been met, meaning that the parties would have had to proceed to consider s 49(1)(c).

At the time of writing, it is only a few days since the decision was announced and I have already seen different views by tax experts as to the way forward. However, there is one point on which all commentators appear to be in agreement which is that, if the decision is right, Mr Lineker has (or his advisers have) identified a glaring gap in HMRC's defence.

From my perspective, I think it inevitable that HMRC would appeal against the decision. Although the decision is silent as to how much is at stake, an earlier procedural decision ([2021] UKFTT 101 (TC)) suggests that the gross amount at stake is over £4.9 million, although such figures are usually deceptive because they overlook tax already accounted for on the basis that IR35 does not apply. In any case, I think it reasonable to assume that there will be sufficient sums at stake to justify HMRC appealing (and HMRC has certainly been known to appeal in cases where far less tax is in contention).

Although I follow the logic of Mr Lineker's arguments and the Judge's reasoning, it strikes me as unlikely that Parliament would have intended the application of IR35 to turn on which partner signed the contracts on behalf of the partnership. Thus, notwithstanding the *Memec* authority, I can certainly see the Upper Tribunal concluding that, in partnership cases, within the context of the IR35 code, the services will not be provided 'under a contract directly between the client and the worker'.

If that proves to be the case, then Mr Lineker's will need to go back to the First-tier Tribunal for the full IR35 hearing. Leaving aside the inherent uncertainty of such cases, I will definitely not be stating my predictions as to how that might fare because such cases are fact-sensitive and very few of those facts have so far been disclosed.

What to do next

I am not sure how many potential IR35 cases involve partnerships. However, pending any appeal by HMRC (or a change in the legislation), it would be worth ensuring that the worker is at least one of the signatories in each contract for his or her services. In other words, that administrative detail should not be left solely to another partner.

For any partnership cases that are already in progress, if the worker was the partner who signed the contracts, it would be advisable to modify the grounds of appeal so as to give the partnership an extra shot at goal.

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Artificial intelligence

The future for indirect tax

We ask how artificial intelligence is transforming the indirect tax function and how that influence might evolve further.

by Liam Larke and Emmie Nygard

Key Points

What is the issue?
When programmed with vast amounts of accurate tax data, and the relevant laws, regulations and policies, artificial intelligence technologies could have the capability to perform rapid analysis and provide real-time tax advice and guidance on routine issues.

What does it mean to me?
Forward-thinking organisations are increasingly employing AI to play the role of a junior team member, using this transformative technology to get better and faster results.

What can I take away?
The first step is to better understand the nature of the technology, and to consider what it can do, as well as its limitations.

The recent wave of media coverage on artificial intelligence (AI) following the launch of ChatGPT and other 'generative AI' programs poses some interesting questions for the future of indirect tax.

The large language model technology which underpins these generative AI tools has the potential to disrupt many industries, including the indirect tax profession, by automating a number of tasks which are currently performed by humans. A Goldman Sachs study, 'The potentially large effects of artificial intelligence on economic growth' by economists Joseph Briggs and Devesh Kodnani, published in March 2023, found that generative AI could substitute up to one quarter of current work activities in the US and European economies.

Large language models, like ChatGPT, are trained on massive amounts of data and have the ability to understand and respond to natural language. When programmed with vast amounts of accurate tax data, and the relevant laws, regulations and policies, these models could have the capability to perform rapid analysis and provide real-time tax advice and guidance on routine issues.

Although these tools aren't yet being used widely in place of more traditional means of tax advisory work, forward-thinking organisations are increasingly employing AI to play the role of a junior team member in other areas, using this transformative technology to carry out the heavy lifting required to get better results, faster. In an increasingly complex, competitive and fast-moving tax environment, how can AI be deployed to transform outcomes for indirect tax teams? We've outlined four leading use cases below.

1. Accessing critical information at speed using chatbot technology

Indirect tax professionals spend too much of their working lives looking for the answers to routine questions. For example, typical checks include whether a VAT return has been filed for a specific jurisdiction this month, or how much VAT should be charged on a particular transaction. This continuous research is time consuming, saps resources and prevents tax practitioners from leveraging their skills in more valuable ways, such as working with the business on tasks that may require more nuance or judgment.

In an ideal world, every tax department would have additional team members whose sole job would be to research and accurately answer high volumes of routine queries every day. Unfortunately, conventional manual processes make this approach far too costly. However, the advent of chatbot technology is turning this aspiration into a reality. New AI models are more advanced than previous generation chatbots in their ability to understand requests for information, automatically interrogate data-rich information sources

PODCAST AVAILABLE
www.taxadvisermagazine.com/podcasts: Simon Groom, ATT Deputy President, on the importance of training for tax professionals, and the concept of cradle to grave tax education.

and reply within seconds to a human operator, with an answer they can understand and use.

While the application of chatbots to indirect tax is currently more theoretical than common practice, the concept has the potential to transform the industry. The public release of these AI models may accelerate the wider adoption of chatbots across the profession. The indirect tax function has so far identified two main use cases for AI-powered chatbots.

Routine transactional inquiries: The first use is to expedite routine transactional inquiries as described above, liberating skilled tax professionals so they can add greater value. In the very near future, this process could involve a spoken request, but at the moment it is more likely to be a query typed into a chat screen. The chatbot then connects with the underlying data source via an API (or application programming interface), the data source is interrogated, and the tax practitioner is given the information they need in plain language.

Information retrieval: The second use is to recruit chatbots to help tax professionals access critical information faster than ever before. Rather than focusing on transactional detail, chatbots can be programmed to zero-in on matters of jurisprudence. For example, companies operating in multiple jurisdictions often contend with significant differences in VAT return obligations, deadlines and reporting requirements. Chatbots can be programmed to hold all this information, and answer queries quickly and accurately.

It is also possible to fast-track this information-retrieval process by preparing a bank of frequently asked questions, rather than instructing the chatbot to interrogate primary sources every time it receives a query. The AI can also be programmed to add new questions and answers to this bank if certain queries arise a number of times.

The application of this technology becomes particularly exciting for the profession when you consider that Excel spreadsheets and PDFs can be turned into chatbots. For example, an indirect team may have a 300 page PDF, which acts as a script explaining how a quarterly process should be carried out. Once the document has been transformed into a chatbot the tax team can interact with it, asking the best ways to proceed. For instance, they could tell the chatbot they have completed one step in the process and the outcome, and based on this information ask what they should do next.

Of course, the successful configuration and deployment of chatbots requires human input both to ensure the technology is set up correctly and to efficiently apply this to meaningful indirect tax use cases. The technology should augment the human service, rather than replace it – there will always be areas of the profession that call for human nuance. The ultimate aim is to use chatbots to efficiently share knowledge across an organisation – giving authorised tax professionals swift access to key information, whenever or wherever they need it.

2. Extracting and posting invoices at speed and scale

Businesses arguably spend far too much of their time currently reviewing account payables data. This process generally involves interrogating invoices to ensure that the correct amount of tax is recorded, as well as that compliance requirements and the liability to the vendor is met.

While this may sound like a straightforward task, the sheer volume of invoices that some organisations process means this can become a significant undertaking.

An experienced accountant working 220 days a year and requiring two minutes to enter a simple incoming invoice can theoretically manage around 30,000 invoices a year. If the cases are more complex, and the accountant takes four minutes per document, that number falls to 15,000 invoices processed a year. In contrast, an AI-based solution has the capability to process between five and six million incoming invoices annually, a 300-fold increase in productivity.

Developments in cloud computing remove the need for extra capital expenditure costs for new IT infrastructure, which is often a major challenge for budget-sensitive indirect tax teams. By investing in a cloud AI solution, organisations are able to keep accounting activities in-house, alongside the expertise needed to handle invoice processes and data.

3. Using AI as an enabler of a strong data strategy

For any business, data management is crucial but is often time and labour

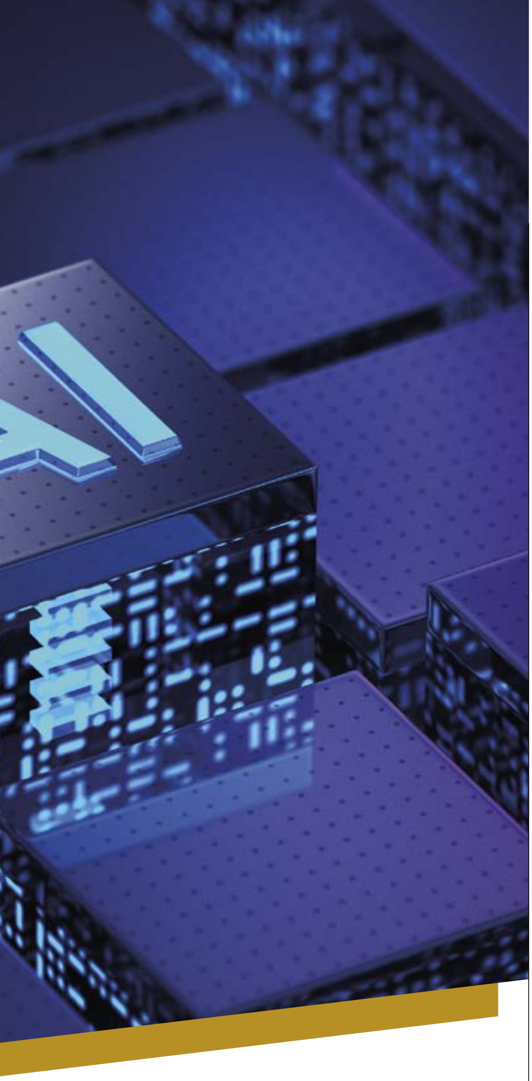
intensive. The quality and accessibility of data are important to a company's ability to shift from 'guessing' to 'knowing', as it takes strategic business decisions to identify value and manage risk.

From a tax perspective, access to quality data in a timely manner can be the difference between being compliant and being subject to penalties from the tax authorities as a result of errors. With the advancement of AI and its application by tax technology experts, the data management process can be greatly enhanced and expedited. This can drive improvements across a range of tasks, from cataloguing and merging data to error correction and classification of the data for specific purposes.

AI is now particularly powerful at data classification and from an indirect tax perspective can support the classification of large datasets such as assessing the recoverability of travel expenses. The use of AI to sort through large amounts of data, identify key data points and group the information can not only accelerate the data management process but also improve the accuracy of the data over time.

4. Leveraging AI to make sense of the complex global tax landscape

With around 200 jurisdictions across the globe, and each regularly changing its



> Small steps can start to show people that the technology is approachable and practical, and could settle some doubts.

indirect tax laws, keeping up to date with regulation can be a daunting prospect for global tax functions. Latin America, for example, is a particular hotspot when it comes to tax change, with Brazil introducing approximately 3,000 tax updates and amendments during the first three months of the Covid-19 pandemic alone.

Large multinational companies can no longer rely on manual ways of identifying and making sense of the latest developments across the globe.

When the stakes are so high, manual processes can be too slow and prone to inaccuracy. Companies that fail to keep up to date face multiple risks, not least of which is failure to pay appropriate tax, and the fines, controversy and damage to corporate reputation that result.

Conventional processes typically involve regional indirect tax teams scouring local information sources. Whenever they identify relevant details – for example, a new law, court case or tribunal that sets a precedent – they write up a report and, if necessary, the document is translated before it is sent to company HQ.

This process is obviously very time consuming and resource heavy. It could take one tax practitioner several days or weeks to process a significant report just to understand what the tax implications may be. New generative AI models, however, have the potential to read, translate and accurately summarise a similar document in seconds, giving tax practitioners actionable information at speed, without having to routinely work through lengthy documents themselves.

However, regardless of the capability of these models, it's vital that AI solutions draw on high quality, verifiable information and websites when looking for relevant information. To be effective, web crawlers must be guided by a carefully designed governance layer to ensure that the software respects website copyright and abides by website rules. This should specify what information can be captured, how it can be used, and when and how often information can be captured. For these tools to be used more effectively, it is crucial that indirect tax professionals carefully curate the reference sources and manage the information gathering process.

Once the AI algorithm has identified and captured relevant information, it can be automatically translated, if necessary, and a short user-friendly summary can be automatically produced.

All of this functionality and governance can be baked into AI models and solutions to take into account the copyright law for every country in the world. For example, to build the solution which EY offers, a comprehensive list of around 1,500 individual official tax information sources was identified covering 196 countries, and all the sources vetted for quality and use of the information.

Getting prepared and taking the first step

These examples show that AI is already more widely adopted than many realise. There are several key steps that indirect tax leaders and their teams should take to get prepared for its growing influence. The first is to better understand the nature of the technology, and to consider what it can do, as well as its limitations.

The second step is to start to experiment. Get your hands on the tech and start testing it out. Does it work from theory to practice?

The third step is to pick something relatively small, a quick win, that is a sweet spot for AI and implement it. It might only save 2% of effort but that can build confidence, and start to develop skills in a team. Small steps can start to show people that the technology is approachable and practical, and could settle some of the doubts that people may have about it.

Once you build that confidence, it's worth taking a step back to address the strategy. You're now generally aware of the technology's capabilities. You know you can apply it and have use cases you want to apply it to. You now must decide to what extent it should be applied, and the fundamental goal of using it. A strategy can then be developed, to be used as a guardrail, and work can progress in pursuit of that end objective.

Alongside the skills, expertise and judgment of tax professionals, generative AI tools show tremendous potential. By harnessing the power of AI and other disruptive technologies, tax leaders can be even bolder in their plans to transform tax operations in the years to come.

The authors would like to thank Graham Richter, Harvey Lewis and Sarah Delaney for their assistance with this article.

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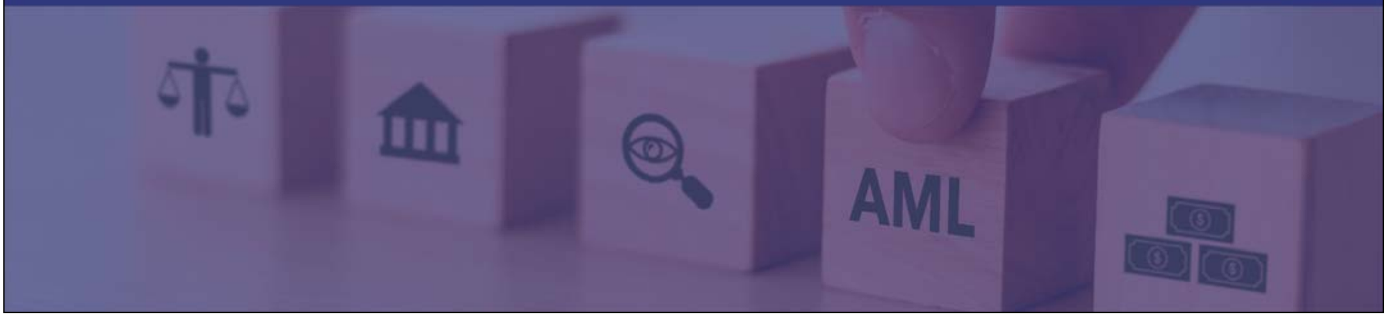

East Midlands Branch 40th anniversary: Tax Conference and dinner

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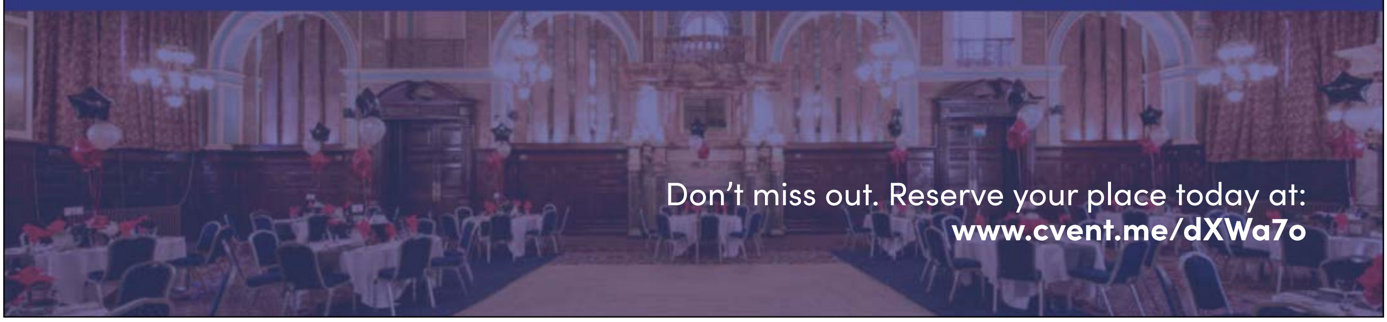
Chartered Institute of Taxation.

12 June 2023 | Grand Hotel, Leicester

To mark the East Midlands 40th anniversary we have developed a Tax Conference and evening dinner at the historic Grand Hotel in Leicester.

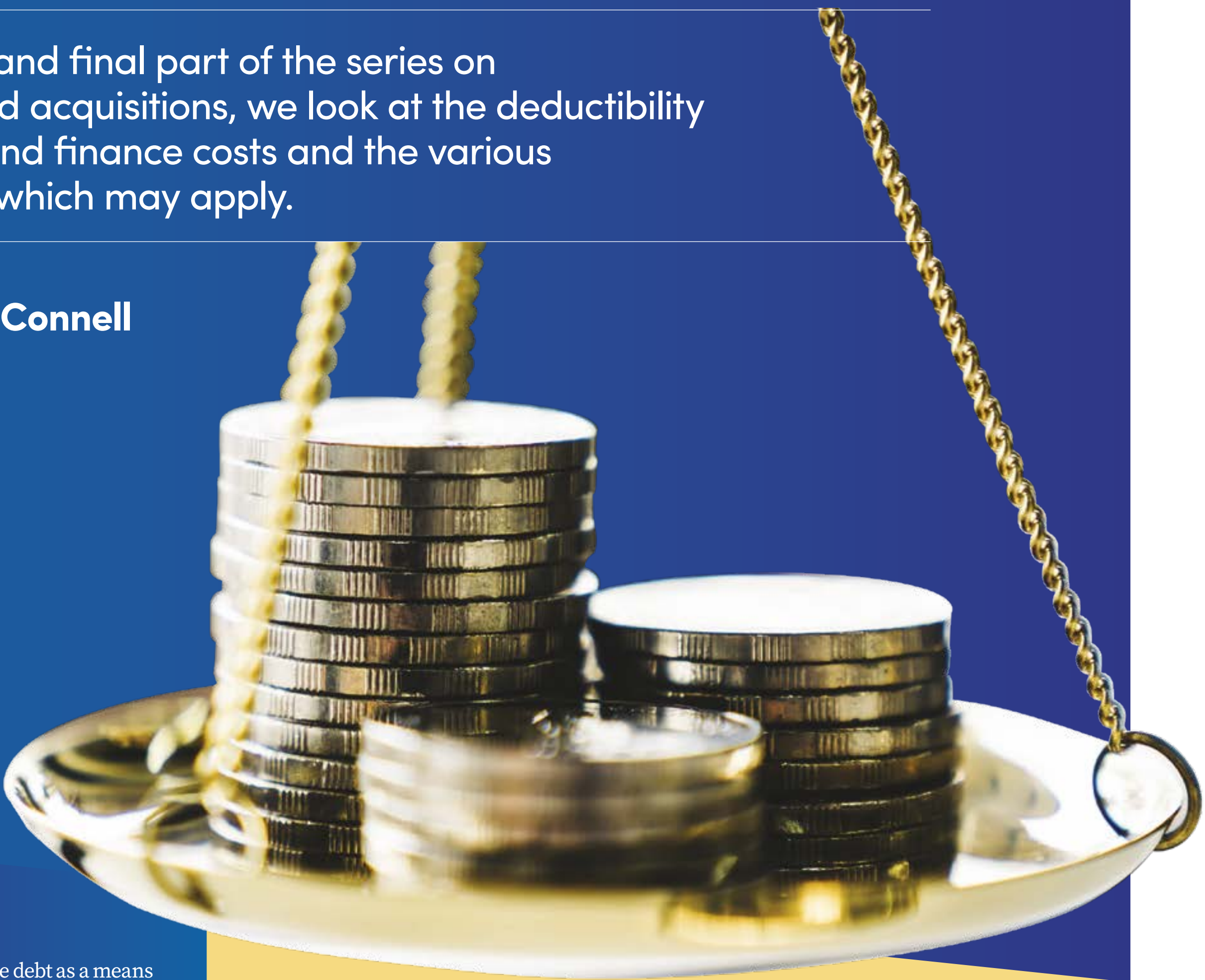
The one day conference will include high-profile speakers covering business and personal taxes, with break-out sessions offering a choice of tax-related and soft skills topics. Do stay on for the 40th anniversary dinner in the hotel’s “King’s Hall”. This is a great networking opportunity to meet new and existing peers and get inspired across a number of tax topics, at this prestigious venue.



Living in interesting times
M&A interest deductibility

In the third and final part of the series on mergers and acquisitions, we look at the deductibility of interest and finance costs and the various restrictions which may apply.

by Graeme Connell



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Key Points

What is the issue?
Purchasers will often use debt as a means of financing acquisitions. One of the key attractions of this method of financing is the expected UK tax deduction for interest and related costs. However, numerous restrictions may prevent this being the case.

What does it mean for me?
When advising companies on the acquisition or disposal of investments, or acting for a company which has recently been acquired, consider how the various restrictions may apply to the deductibility of the additional interest and related costs.

What can I take away?
There are numerous restrictions which may apply to restrict the tax relief available for interest and related finance costs. They should be considered in turn, ending with the corporate interest restriction.

This article is the final piece in a series of three exploring some of the tax issues faced by companies or groups in relation to mergers and acquisitions – in this case, the tax deductibility of interest and finance costs on various types of debt.

Types of debt

Vendor debt is outstanding consideration, which is likely to be formalised as an interest-bearing loan note. Inter-company financing is debt provided by other parts of the acquisition group.

In a leveraged buy-out situation, other forms of debt may arise. Senior debt, typically provided by a bank or a syndicate of banks, has priority over other types of debt in terms of repayment. It is typically secured by the assets of the group and therefore has a lower interest rate than other types of debt. This debt is normally drawn down at a lower tier in the holding company structure than other forms of finance, to provide structural seniority to the lenders.

Subordinated debt has a lower priority than senior debt in terms of repayment. It is typically unsecured and carries a higher interest rate than senior debt. The most common type of subordinated debt in an M&A context is mezzanine debt. Mezzanine debt can also include equity features, such as warrants or options, allowing the holder the ability to subsequently acquire equity in the company.

Interest as a distribution

Interest payments can be recharacterised as distributions when these are in respect of either 'non-commercial securities' or 'special securities'.

Non-commercial securities are those where the interest charge exceeds a reasonable commercial return on the lending. HMRC's Company Taxation Manual at CTM15502 confirms that the test will be imposed when the borrowing is taken out and will not be retested based on subsequent events. As senior and mezzanine debt is generally borrowed from third parties, there should normally be no issue around commerciality. However, care should be taken where borrowing is from a connected party or where the debt has a particularly high yield or unusual feature.

Where a restriction applies, only the excess interest above the reasonable commercial rate of return will be reclassified as a distribution. Where any withholding of tax is required, this would not apply to the recharacterised amount.

Special securities, in an M&A context, are likely to include those which are convertible into shares or carry a right to receive shares, such as convertible loan notes or debts with an equity 'kicker', warrant or option. However, no restriction will apply if the securities are listed on a recognised stock exchange or are issued on terms 'reasonably comparable' to such listed securities. HMRC should take a broad view of what this means (CTM15515).

Securities where the interest paid varies based on the results of any of the borrower's business (and this is not an inverse relationship), such as limited recourse loans, will be special securities.

Finally, securities and shares which are 'stapled', such that one is likely to be acquired or disposed of with the other, will be special securities. However, this only applies to securities and shares issued by the same company. There should therefore be no restriction where these are issued by different companies in the acquisition structure.

Transfer pricing

In the context of an acquisition, the transfer pricing rules may apply to inter-company borrowing and any borrowing involving the shareholders of the acquisition structure. The transfer pricing rules deny interest deductions between connected persons if the relevant borrowing is not on arm's length terms. To comply with the arm's length principle, the terms, amount and availability of the debt will be adjusted (for tax purposes) to reflect what they would have been on an arm's length transaction.

Although third-party senior and mezzanine financing is typically on arm's length terms, HMRC considers the terms of the senior and mezzanine debt as useful comparables when trying to establish the overall arm's length position, as the debt is from an independent party, relates to the specific business and is usually provided at the same time as the shareholder debt.

If a borrower is denied a deduction for interest under the transfer pricing rules, a UK lender can make a claim for a compensating adjustment and the lender will not be treated as receiving interest income.

Careful consideration of each relevant loan is necessary, with the terms and amount being compared to what would have been agreed between independent persons dealing at arm's length. Various accepted methods can establish an arm's length price, and details of the methods employed should be recorded.

> **Companies may need to account for non-market loans at less than their face value in certain circumstances.**

Late paid interest

Interest is generally deductible when it accrues, rather than when it is paid. Even if the borrower rolls up the interest and pays it at the end of a loan relationship, the timing of the deduction will be spread throughout the term of the loan.

The late paid interest rule prevents tax mismatches where the borrower claims relief for interest as it accrues, but the lender is only taxed when the interest is received or is outside the UK tax net entirely. The rule defers the borrower's deduction for interest relief until the interest is actually paid. The rule was partially repealed in Finance Act 2015 and now applies only to loans by participators to close companies (and where this is a company rather than an individual, it only applies if the company is in a non-qualifying territory) and loans by trustees of pension schemes.

Similar rules apply to deeply discounted securities and prevent the mismatch that arises where the borrower claims tax relief on interest as it accrues, but the lender doesn't recognise the interest payment until the deeply discounted securities are redeemed. The tax relief available to the borrower is deferred until the deeply discounted securities are redeemed. The deeply discounted securities rule was also partially repealed in Finance Act 2015 and now applies only to loans by participators to close companies.

Both rules can apply to loans from individuals or partnerships in a UK acquisition, to the extent that they are not brought into account under the loan relationship rules by partners in the partnership.

Deeply discounted securities are sometimes preferred to loan notes with interest that rolls up where the lender is subject to withholding tax on interest because there are no payments of interest throughout the term of the borrowing and so no withholding is required. However, if there is a risk that tax relief will be deferred, it may be more efficient for the borrower to pay the interest in kind; for example, by issuing funding bonds.

Interest free and non-market loans

Companies may need to account for non-market loans, such as interest-free loans, at less than their face value in certain circumstances. The difference between the two values (the discount) will then be debited to the company's income statement over the loan's life.

A tax asymmetry may arise if corresponding credits arising on the discount are not brought into account by the lender. Legislation restricts the deductibility of debits relating to these loans where the lender is an individual (including individuals in a partnership) or is a company resident in a non-qualifying territory.

Hybrid and other mismatches

In the context of finance costs, the hybrid rules can deny a tax deduction where the payment is not taxed by the recipient, or where another party also obtains a deduction for the same payment, because of a structural mismatch (hybridity) in an instrument or structure. Hybridity can arise in relation to the way payments are treated (as equity or debt) or in relation to the way entities are treated (transparent or opaque) by different jurisdictions.

These rules can apply to both connected party transactions and any third party transactions which are 'structured arrangements', as well as wholly domestic transactions involving a UK tax mismatch. These rules will therefore need to be considered in relation to every debt. The most commonly affected debt in an M&A context will be debts due to investors within the structure, including the investors in any fund which ultimately owns the company. Hybridity is also most often found in relation to the fund structure itself.

The rules in relation to hybrid and other mismatches are complex. Helpfully, changes introduced in Finance Act 2021 have relaxed the requirement to treat lenders and investors holding direct investments of 5% or less in a borrower company as 'acting together'. In addition, where investors hold interests through a 'transparent fund' (broadly, a UK tax-transparent collective investment scheme or authorised investment fund), it is generally possible to ignore a hybrid mismatch where a person (together with any related parties) has less than a 10% interest in that amount.

Unallowable purposes

The unallowable purpose rule can disallow a tax deduction for a company's interest expense if it is attributable to an unallowable purpose or intention, such as securing a tax advantage. The rule can apply even if the tax advantage does not arise directly from the loan relationship in question. The rule operates on an accounting period basis, and a loan may fall under the rule in some accounting periods and outside it in others.

The unallowable purpose rule is likely to apply to borrowers who enter into or retain a borrowing for artificial, tax-driven arrangements, retain a loan they no longer need for their commercial or business purposes, refinance an existing borrowing purely to obtain a tax advantage, or use the loan to fund activities that cannot make a pre-tax profit.

The unallowable purpose rules have been prominent in tax cases in 2022, with *BlackRock Holdco 5* [2022] UKUT 199 and *JTI Acquisition Company* [2022] UKFTT 166 being particularly relevant to M&A activity. Prior to these cases, it was generally acknowledged that borrowing to finance a third-party corporate acquisition is typically not considered an unallowable purpose, even when a non-trading holding company surrenders a non-trading deficit generated by interest payable on such borrowing via group relief.

The approach taken by HMRC in *JTI Acquisition* appears to be at odds with the guidance provided in the Corporate Finance Manual at CFM38180 regarding the application of the unallowable purposes rule. The guidance indicates that obtaining tax relief in multiple jurisdictions should not trigger the unallowable purpose rule, as long as the structure is commercially sound and relief is not available more than once in the UK. In contrast, the First-tier Tribunal supported HMRC's view that all debits were attributable to an unallowable purpose and should be disallowed, where a new UK company was established within a global group to purchase shares from a third-party vendor, borrowing from its parent company to do so and securing a tax advantage that allowed for relief from tax for other UK group companies through group relief. However, it should be noted that the group being acquired had no UK nexus, which appears to have been an issue for HMRC.

In *BlackRock*, the Upper Tribunal concluded that the group's acquisition structure, including the formation of the UK-resident company and the resulting loans, was solely intended to gain a tax advantage. It was therefore determined that the commercial purpose would not have existed without the tax purpose and all of the debits were deemed to be associated with the unallowable purpose.

These decisions suggest that structuring a commercial transaction in a tax-efficient manner may be enough for the rules to apply, even if the loan used to fund the transaction is commercial and therefore the specific facts and circumstances surrounding the use of a UK acquisition vehicle should be carefully considered.

As part of an acquisition, external finance and shareholder debt is often introduced into the structure.

Corporate interest restriction

The final restriction which may apply, as it is applied after consideration of all of the others above, is the corporate interest restriction (CIR). The CIR is a group-wide, structural restriction on tax relief – unlike the other restrictions above, which are transactional. The CIR regime, despite its complexity, can be explained simply in principle. First, determine the relevant worldwide group to which the regime applies, and calculate the UK group's aggregate UK net tax-interest expense (ANTIE). If ANTIE is more than the annual £2 million de minimis, apply the fixed 30% ratio to the UK tax-EBITDA or the elective group ratio, based on the worldwide position, to determine the total disallowed amount. Finally, the total disallowed amount must be allocated to UK members of the group in the interest restriction return.

Each of the fixed and group ratios are subject to debt caps based on the worldwide net group interest expense. There are also several further elections which may be beneficial. The complex workings of the CIR have cannot be covered in detail here.

However, in an M&A context, several different CIR-related issues may arise. Following completion of an acquisition, the worldwide group for CIR purposes may change. A group for CIR purposes is a parent company and its subsidiaries which are (or would be if it applied those standards) consolidated under the International Financial Reporting Standards. Prior to a transaction taking place, this may be Target itself. Following the transaction, this should be another entity in the purchaser's group. However, if there is a controlling corporate investor in an investment fund which owns Holdco, the relevant group would be extended to include the investor, the fund partnership and its subsidiaries, along with any other subsidiaries consolidated by the majority investor for accounting purposes. Any change in the company's ultimate parent company for CIR purposes will necessitate the ANTIE and tax-EBITDA being split around the date of the change, on a 'just and reasonable basis'. Following the change, any disallowances of interest may be computed by a reporting company elsewhere in the wider group.

As part of an acquisition, external finance and shareholder debt is often introduced into the structure. Interest will be payable to the external lender(s), as well as up the acquisition chain of companies to the ultimate shareholders/fund. These amounts are potentially subject to restriction as they form ANTIE, which should increase as a direct result of the acquisition. For the purposes of the group ratio election, related party interest is disregarded and therefore substantial borrowings from investors, which are generally treated as related parties for these purposes, may result in this election becoming unfavourable. The UK group's tax-EBITDA and worldwide group-EBIDTA and interest expense may also change if the company is joining part of a larger group.

Following the completion of the acquisition and the likely increase in ANTIE, the group may wish to consider reorganising its debts (provided there is a commercial purpose for doing so) to bring loan assets into the UK, which would reduce ANTIE and therefore the level of any potential disallowance.

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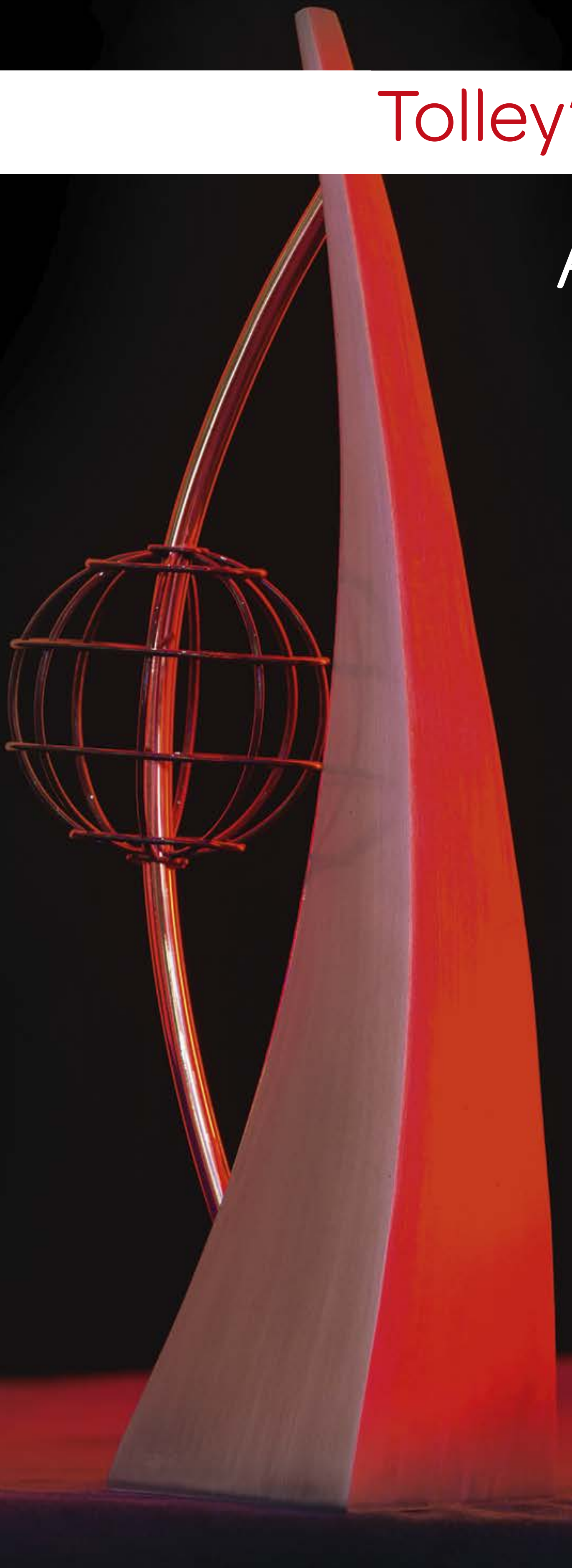

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WELCOME

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By the time you read this, we should have experienced another 'tax administration and maintenance day' (or TAMD for short). While at the time of writing the date has not yet been set, we understand it will be in late April.

TAMD is the sequel to 'Tax Day', an initiative of former Financial Secretary to the Treasury Jesse Norman, which first took place on 23 March 2021. Having a single day on which tax announcements take place is intended to increase the transparency, discipline and accessibility of tax policymaking, and to give Members of Parliament, tax professionals and other stakeholders a better opportunity to scrutinise the proposals. The government published over 30 tax updates, consultations and related documents on the inaugural Tax Day.

The first TAMD took place on 30 November 2021, while Lucy Frazer was Financial Secretary to the Treasury. Again, over 30 tax updates, consultations and related documents were published.

After an 18 month hiatus, in which the policymaking cycle has been rather interrupted by other events, TAMD returns. Considering the number of announcements at previous events, I am concerned at a potential raft of additional proposals to change the tax system, in addition to those already announced at the Spring Budget. If there is a theme to the feedback we receive from members and businesses, it is the need for stability. I do wonder sometimes when the tax system will be 'finished'.

The Spring Finance Bill – or Finance (No. 2) Bill to give it its proper title – was published on 23 March. At 478 pages, it is the longest since 2017, covering a range of measures including multinational and domestic top-up taxes, capital allowance full expensing, changes to R&D tax reliefs, changes to the pensions regime and a new alcohol duty regime. As part of our charitable objectives as educational charities, we are currently working on briefings and representations to MPs to support the scrutiny process and highlight possible flaws and areas of uncertainty.

Some clauses will be debated in Committee of Whole House (CWH), which takes place on the floor of the House of Commons. The clauses for debate in CWH are selected by opposition parties, and any MP who wishes to can contribute to the debate. For the current Bill, the measures chosen for debate at CWH are those around corporate taxes and reliefs, pensions, the electricity generator levy and alcohol duties. The remaining clauses will then be debated within the Public Bill Committee, with debates scheduled to conclude on 23 May.

This all sounds well and good, but we have often lamented the lack of real scrutiny that tax changes actually receive. Finance Bills receive less parliamentary scrutiny than any other piece of primary legislation, and oral evidence is not permitted as part of the process (unlike other public bills).

Could the process be better? Yes, it could. You may remember the 'Better Budgets' report the CIOT prepared, alongside the Institute for Fiscal Studies and the Institute for Government (see tinyurl.com/ya9h3vy6). That was over six years ago now, and while some things have improved, there remains plenty of scope for improvement.

INDIRECT TAX

VAT: new penalty system

The penalty system for VAT changed on 1 January 2023. For VAT return periods starting on or after 1 January, new rules apply to late submissions of VAT returns and late payments of VAT, replacing the former default surcharge and default interest system.

The CIOT continues to engage with HMRC on the new penalty system. At a recent Penalty Forum meeting, two points of note arose.

1. Commercial restitution

Interest is generally charged on underpaid taxes in order to represent 'commercial restitution'; i.e. to compensate the Exchequer for the loss of the use of monies during the period the tax had been unpaid. Under the previous interest system, if output VAT was due from a supplier but the corresponding input VAT had not been recovered by the customer, and also the customer was entitled to fully recover the input VAT, there would be no loss of money to the Exchequer. HMRC could therefore apply an 'inhibit' setting on their system so that no interest would be charged to the supplier.

Under the new system, where interest becomes due from the first day that the unpaid VAT is due, the ability to apply the old inhibit indicator is no longer available. So, interest will still be chargeable even where there is no net loss to the Exchequer. This may particularly impact associated fully taxable businesses or those experiencing delays in a VAT group application.

2. Correspondence with agents

Where an agent is authorised by a business to act on their behalf, the agent will receive exact copies of the penalty notices issued to the business. HMRC have now removed the business's name from the agent letters due to data protection concerns, so only the VAT numbers are supplied. For the time being, the agent will need to identify the business based on their VAT number, either from their client records or at www.gov.uk/check-uk-vat-number. We have been working with HMRC to try to make this interim process easier.

HMRC are working on changes to the agent notification letter so that the client's name (as well as their VAT number) can be included in future communications to agents.

Member feedback

The CIOT would welcome feedback from members on their experiences of how the new penalty system is working in practice, whether it is going smoothly or if they have run into any complications. We would be particularly interested to hear about how the first-year concession is being applied in practice. This means that during the first year, HMRC should not issue a penalty if the VAT due is paid in full within 30 days of the due date. If you have any comments, please email technical@ciot.org.uk with 'penalties' in the title.

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GENERAL FEATURE

Tax simplification

CIOT, ATT and LITRG, along with ICAEW and ICAS, have jointly written to the Financial Secretary to the Treasury, proposing a series of actions that ministers and officials should take if they are serious about delivering a simpler tax system.

During his 'Growth Plan' statement on 23 September 2022, the then Chancellor of the Exchequer Kwasi Kwarteng announced the abolition of the Office of Tax Simplification (OTS), with the intention instead to 'embed tax simplification into the heart of government'. This decision is one of the few announcements made by Kwasi Kwarteng that has not subsequently been reversed.

The reaction to the OTS's abolition appears to indicate that Kwasi Kwarteng and the current Chancellor Jeremy Hunt are in a significant minority of people who think this is a good idea. Even the cross-party House of Commons Treasury Committee has proposed amendments to the Finance Bill which include the removal of the clause that abolishes the OTS.

In correspondence between the Treasury Committee and the Chancellor, Jeremy Hunt gave his assurance that the closure of the OTS does not mean that simplifying tax is no longer a priority, and confirmed that officials in the Treasury and HMRC have been given a clear mandate to focus on simplicity in tax policy and administrative design.

In our letter to the Financial Secretary, we offered our continued support to Treasury and HMRC officials in this regard. But the main purpose of the letter was to set out several processes which the government should introduce to deliver on its promises, and demonstrate its commitment to tax simplification. These are:

1. identify the characteristics of tax simplification;
2. ensure that someone is accountable for delivery of tax simplification;
3. include simplification declarations in tax information and impact notes;
4. gain external input to policy design and implementation;
5. seek feedback from a broad range of stakeholders;
6. ensure that HMRC and Treasury engagement groups include tax simplification as a standing objective;
7. increase awareness and improve guidance;
8. allow time for the development and integration of systems; and
9. adopt a consistent approach across tax regimes.

The joint letter can be found on the CIOT website at www.tax.org.uk/ref1098 and on the ATT website at www.att.org.uk/ref423. We will publish the Minister's response once received, and will continue to work with Treasury and HMRC to achieve these simplification objectives.

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LARGE CORPORATE OMB

Accounting periods straddling 1 April 2023

The CIOT has received confirmation that previous advice given to the effect that accounting periods straddling 1 April 2023 will be treated as two separate accounting periods with respect to capital disposals was incorrect.

Ordinarily, when a company's accounting period straddles a change of corporation tax rates on 1 April, Corporation Tax Act 2010 s 1172(1) requires time apportionment for profits, which are then assigned to different periods subject to the corresponding rates. However, with respect to 1 April 2023 and the introduction of a higher main rate, Finance Act 2021 Sch 1 para 34(2) states:

> 'In the case of an accounting period (a "straddling period") beginning before 1 April 2023 and ending on or after [that] date, those other amendments have effect as if the different parts of the straddling period falling in the different financial years were separate accounting periods.'

HMRC had advised Tolley that this was to be read to mean that two distinct

GENERAL FEATURE

Land and buildings transaction tax and the additional dwelling supplement

The CIOT has responded to the Scottish government's second consultation containing the draft legislation on reforms to the additional dwelling supplement of the land and buildings transaction tax.

In February 2022, the Scottish government launched a public consultation on wide-ranging reforms to the additional dwelling supplement (ADS), looking at:

- the extension of the 18 month sale and residency timeframes;
- joint-purchasers and previous occupation of the replaced property;
- inclusion of previously inherited properties in the ADS calculation;
- the family home being discounted from consideration when a new house is purchased by a member of a separating/divorcing couple; and
- only a purchaser's share of a jointly owned property being featured in the ADS calculation.

Draft legislation had been expected in summer 2022 but was not published until February 2023. During that time, the Scottish Budget of December 2022 increased the rate of ADS from 4% to 6% with immediate effect, notwithstanding the absence of the government's proposed draft legislation.

When it was published, we were pleased to note that the vast majority of the changes to the rules made by the draft legislation were in accordance with the recommendations made by the CIOT in our response to the first consultation on these issues. The 18 month timeframes were extended to 36 months; a joint-purchaser of a replacement house need not have lived in their partner's previous property; the departing spouse/individual in a co-habiting couple divorcing/separating will be afforded relief from the ADS; and the £40,000 threshold will only be measured against an individual's share of a property rather than the whole.

However, there remain some areas within the government's draft legislation where CIOT has reservations.

Firstly, whilst previously inherited properties will be discounted from the ADS calculation of a subsequent purchase, this only applies to those properties inherited after the missives for the new property are concluded. In England, Northern Ireland and Wales, properties inherited three years prior to the subsequent purchase are excluded from the stamp duty land tax (in England and Northern Ireland) and land transaction tax (in Wales) supplementary charges.

We recommended that a similar window be in place for land and buildings transaction tax – the Scottish government's proposed change would arguably render the reform effectively worthless. By allowing up to three years, the reform would be much more effective and facilitate the fairness which it was seeking to bestow. In addition, it might help to reduce confusion from those residents of elsewhere in the UK buying a property in Scotland having inherited one outside.

The other matter is the lack of provision for Revenue Scotland to have discretion in allowing relief from ADS in extenuating circumstances. In their response to the first consultation, where this point has been raised, the Scottish government said that this reform would cause 'a significant degree of difficulty'. However, HMRC have similar powers with respect to stamp duty land tax's additional dwelling surcharge and those few who might find themselves falling foul of the rules, due to no fault of their own, might be afforded some relief if their circumstances so merit.

The full CIOT response is available here: www.tax.org.uk/ref1087.

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accounting periods are to be created either side of 1 April 2023, and that any chargeable gains should be assigned in full to one accounting period or another. The normal treatment would be to apportion the capital gain alongside the company's profits, but the advice given to Tolley was that this would not apply under para 34(2). Tolley initially stated that:

> 'We have had confirmation by email from HMRC on the rate changes that in their view whilst the general requirement for accounting periods straddling a rate change would be a strict time apportionment of profits, the commencement provisions in Finance Act 2021 Sch 1 para 34 mean that the accounting that straddles 1 April 2023 is split into two deemed accounting periods (one ending on 31 March 2023 and one starting on 1 April 2023) and that the allocation of profits and gains is akin to those for long periods of account. They stated that this would mean, for example, that where a company has a chargeable gain arising in the pre-commencement period (or indeed in the post-commencement period) the correct treatment under para 34 would be to allocate that to the period in which it arises, based on the date of disposal.'

However, upon CIOT's querying the matter, HMRC have now confirmed that the advice they gave to Tolley was incorrect. Paragraph 34(2) does not provide for an alternative basis for assessment to override the default time-apportionment method per s 1172(1). Both Tolley's guidance and that of HMRC have been updated to reflect this position. Tolley (at paragraph D1.1202) now reads:

> 'Companies with an accounting period beginning before 1 April 2023 and ending after 1 April 2023 will need to apportion the accounting period across the two financial years to reflect the change in corporation tax rate.'

It also provides a worked example.

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GENERAL FEATURE PERSONAL TAX
MANAGEMENT OF TAXES

Natural capital consultation

HMRC and HM Treasury have launched a wide-ranging consultation looking at the taxation of carbon and nutrient credits and biodiversity units, as well as potential changes to agricultural property relief.

On 15 March, the government published a consultation on the 'Taxation of environmental land management and ecosystem service markets'. Despite the somewhat unpromising title, this is an important and wide-ranging consultation which will be relevant to those advising farmers and landowners, as well as those with an interest in climate change and ecology measures.

The ATT has been looking at tax issues around carbon credits as part of our Natural Capital Working Group (NCWG) for some time now and the group briefed HMRC prior to the release of the consultation.

The consultation is split into two parts. The first element is a call for evidence looking at the tax issues around:

- carbon credits (such as those created from the woodland and peatland codes designed to remove greenhouse gases from the atmosphere);
- nutrient mitigation (measures to reduce pollution from nitrates and phosphates); and
- biodiversity net gain units (which are related to new requirements on developers to replace habitat lost to building projects).

HMRC are keen to understand the sorts of projects that are being set up. They also wish to identify where uncertainties around tax have influenced which projects go ahead. Any examples of projects that members are seeing in practice would be very helpful. The group has looked mainly at woodland and peatland code matters so far, so examples of phosphate and nitrate schemes would be particularly welcome.

Cases where tax has affected the viability of projects or led to a different choice of project would also be very interesting. We understand, for example, that some biodiversity schemes are focusing on hay or wildflower meadows rather than wetland or scrubland projects, as it is still possible to graze or take a crop from such meadows and keep within the definition of agriculture.

The second part of the consultation focuses on potential changes to agricultural property relief (APR). One of the concerns of the NCWG is that changing the nature of land use as a result of entering these schemes could cause landowners to lose valuable inheritance tax reliefs. This would clearly be a disincentive for landowners to engage in climate-positive action, and HMRC would be keen to see examples of where this has happened or could happen.

On a wider note, the consultation also picks up some of the suggestions from the recent Rock Review – a review of tenant farming in England with recommendations for the Department for Environment, Food and Rural Affairs (see tinyurl.com/vvkxzwyf). This includes a suggestion to restrict the application of 100% APR to farm tenancies of eight years or more. Again, we would appreciate member comments on this proposal.

Members may also be interested to know that HMRC have recently updated its manual pages (IHTM25253) to confirm that woodland and peatland carbon schemes are capable of qualifying for business property relief.

The current consultation excludes VAT, but examples of issues in practice remain very welcome as we are discussing VAT issues directly with HMRC.

The consultation closes on 9 June 2023, and we are expecting dialogue with HMRC/HMT to continue after that date. Although work has commenced on the response, further feedback from members on any relevant aspects would be very welcome by the end of May.

The consultation can be found at tinyurl.com/22hbtfx2. Please send feedback or comments to atttechnical@att.org.uk or direct to me below.

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LARGE CORPORATE OMB

R&D tax reliefs review: consultation on a single scheme

CIOT and ATT responded to the 'R&D tax reliefs review: consultation on a single scheme'. Both organisations' responses recognised the different levels of support required by large and small companies and emphasised that the muted timetable for introduction of a new single scheme was too short.

The consultation on a single scheme for R&D tax reliefs was part of the wider review of the UK's R&D relief schemes that began in Spring 2021. R&D relief is a longstanding form of government intervention into economic activity that is supported throughout the business world. The consultation document noted the continued government focus on encouraging innovation generally, and the continued government commitment to supporting SME R&D.

CIOT response

The CIOT said that having one scheme for R&D tax relief rather than two would be a simplification to the UK tax code, and that if there is to be one scheme for all companies, it should be an above the line RDEC like credit. However, we also said that a single scheme with a single rate will not necessarily be simple or fair for all smaller companies. In particular, we noted that complications will arise as a result of the two rates of corporation tax that will come into effect from 1 April 2023. This will mean that companies which have profits that are subject to marginal relief will receive a lower level of effective support for R&D activities.

The CIOT said that the reasons for historically giving a higher rate of relief to SMEs were still relevant. Consequently, whilst recognising that it would involve additional complexity within the scheme, consideration should be given to having a higher rate of R&D relief for smaller companies within a single scheme, especially during a transitional period.

With regard to timing, the CIOT said that implementing a new scheme from April 2024 is too soon. The current pace of change in the R&D relief regime is already challenging for businesses and their advisers. The timetable should ensure that the new rules are fully published, and the detail of what will be required from companies is fully available, in good time before the commencement of a new regime. This will avoid a repeat of the unsatisfactory position that companies are currently in with regard to the changes that came into effect from 1 April 2023. This will minimise uncertainty, which is one of the biggest blockers to investment. It is important that changes are managed in an efficient manner and well communicated in conjunction with transitional rules that minimise commercial disruption.

More generally, we noted the Report published in January 2023 by the House of Lords Finance Bill Sub-Committee (tinyurl.com/4r8u9v9x). The recommendations made by this report will remain relevant in relation to any new single scheme.

Our full response can be found at: www.tax.org.uk/ref1076

ATT response

As set out in our response to the consultation (www.att.org.uk/ref413), the ATT does not support the introduction of a single merged R&D relief scheme. We do not believe that any such scheme would adequately take into account the very real differences between the activities and needs of smaller and larger companies.

The difficulties arising from applying a 'one size fits all' approach to R&D relief are reflected in the specific questions posed by the consultation regarding the treatment of sub-contracting, the cap on repayable credits and offering differing levels of relief, etc.

We are also concerned that combining the two schemes is not a proportionate way to tackle abuse and fraud, and risks sending the message that the UK values the innovative contributions of smaller companies less than that of their larger peers.

Finally, ATT agrees with the CIOT in that the proposed commencement date of April 2024 is not feasible, especially as consultation on the future design of any new scheme has only just begun. In ATT's view, given the fundamental nature of the changes proposed, and the impact they may have on R&D activity in the UK, the process should not be rushed. Instead, the appropriate time should be taken to ensure that any new scheme is well designed and operates effectively for all parties.

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INDIRECT TAX

VAT: the second-hand motor vehicle payment scheme

From 1 May 2023, the way that VAT is accounted for on second-hand motor vehicles meeting specific criteria changes. The new second-hand motor vehicle payment scheme replaces the VAT second-hand margin scheme for motor vehicles when they are bought in Great Britain and shipped to Northern Ireland for onward sale.

The new second-hand motor vehicle payment scheme ('SHMVPS') was due to be launched in October 2022. However, it was deferred in July of that year whilst the UK government continued to seek a negotiated settlement with the EU on the implementation of the Northern Ireland Protocol. For more background on the journey to the Windsor Framework (tinyurl.com/5bjd2hcb), see *Tax Adviser* article, 'The Windsor Framework: a new beginning for trade with Northern Ireland' (tinyurl.com/2wu5t7hw).

New VAT scheme

The new SHMVPS rules allow the business to recover a VAT-related payment on the purchase price of eligible vehicles in the following circumstances:

- The business is registered for VAT in the UK and has a business establishment in the UK.
- The eligible second-hand motor vehicle is purchased in Great Britain (eligibility purchase rules are the same as the second-hand margin scheme).
- The vehicle is moved to Northern Ireland with the intention to resell it in Northern Ireland or the EU.

The claim amount is calculated by applying the VAT fraction to the purchase price and when the vehicle is sold, VAT is due on the full selling price.

There is a similar new scheme for EU businesses, though details about how EU businesses can make claims, starting from August 2023, will be released in due course.

For UK businesses, there is a six-month transitional period applicable to vehicles in stock in Northern Ireland on 1 May 2023 that were previously moved there under the second-hand margin scheme. These vehicles remain eligible for the former VAT accounting treatment as long as they are sold by 31 October 2023. Otherwise if they are sold in Northern Ireland or the EU, VAT would be due on the full selling price plus no SHMVPS claim can be made. There is the option of shipping unsold vehicles back to Great Britain before 1 November so that they could be sold under the usual margin scheme rules.

The SHMVPS still requires the usual import VAT declaration for movements of goods from Great Britain to Northern Ireland, though this would normally be fully recoverable.

Full details of the SHMVPS are published in gov.uk guidance (tinyurl.com/358um4rf).

CIOT meeting

CIOT representatives met with HMRC in February to discuss the new rules and had an opportunity to clarify the following points.

- Adapted vehicles rules: SHMVPS vehicles can still interact with the zero-rating rules on second-hand adapted vehicles for people with disabilities (tinyurl.com/24sz7bhe para 9), provided all of the usual qualifying criteria rules are met.
- VAT groups: The usual movement of own goods rules would still apply for VAT groups where group members move vehicles between Great Britain and Northern Ireland (tinyurl.com/3ckhmn76).
- Subsequent movements of vehicles from Northern Ireland back to Great Britain: If a business from Great Britain purchases a SHMVPS vehicle from a Northern Irish seller, it will not be eligible for the second-hand margin scheme. The Northern Irish seller would charge VAT on the full selling price, which the British business should be able to claim, then the British business would charge VAT on the full selling price to its own customer.

We anticipate that these points will be added to guidance in due course so that taxpayers have a GOV.UK source upon which to rely. However, if you have any feedback about the new VAT scheme or other points of difficulty, do let us know at technical@ciot.org.uk.

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EMPLOYMENT TAX

Employment Taxes Forums

A brief overview of Employment Taxes Forum meetings attended by representatives of the CIOT, LITRG and ATT, including the Employment and Payroll Group, the Collection of Student Loans Group, the Expat Tax Forum and the Share Schemes Forum.

In this article, we summarise the main points from meetings of various groups that took place in early Spring 2023, which are attended by CIOT, LITRG and ATT volunteers. HMRC publish the minutes of meetings on GOV.UK.

Employment and Payroll Group (EPG)

This group is the main HMRC forum for employment tax related matters, and is attended by ATT and CIOT representatives.

At its recent meeting, the main topics discussed included: self-serving time to pay for PAYE; the employer PAYE direct debit scheme; mandating the P11D/P11D(b) online service; reviewing the starter and leaver processes to improve the operation of correct tax codes; the pensions dashboard; research into expenses and benefits in post pandemic working patterns (including the cycle to work scheme); the child maintenance service (employer deductions); and a new 'digital wallet' for employee NINOs.

Expat Tax Forum

This forum is attended by the CIOT, and recent discussions have included updates from HMRC on service levels within its NIC operations, Personal Taxes operations and Expat operations teams. In addition, HMRC provided an update on work on its globally mobile workers project, which had been initiated following forum representatives' feedback that HMRC's processes had been unsatisfactory. This project is currently looking at section 690 directions and the various PAYE manual international section appendices, and IT issues.

Share Scheme Forum

CIOT and ATT representatives attend this forum. The main topics discussed at the meeting were the consultations announced at the Spring Budget on non-discretionary share schemes (a call for evidence) and administrative changes to the enterprise management incentive (EMI) scheme. In addition, a proposal for

PERSONAL TAX

Support for childcare and the early years inquiry

LITRG responded to the House of Commons' Education Committee's inquiry on support for childcare and early years. The response considers the tax and benefit interactions of childcare schemes.

Support for childcare featured heavily in the recent budget with changes to universal credit childcare element and the extension of free childcare announced. Prior to those announcements, in December 2022, the House of Commons' Education Committee launched an inquiry (tinyurl.com/ycku4x26) into support for childcare. It examined how easy it is to navigate the existing childcare system and whether current childcare entitlements are providing families with affordable and flexible childcare, as well as how the current offerings impact on returning to work.

LITRG's submission focused on two key areas: the interactions between the various childcare schemes; and the provision of guidance and information about childcare support. The schemes covered by our submission included employer-supported childcare (including childcare vouchers), tax-free childcare, universal credit childcare element, tax credits childcare element and free childcare offer. The submission was similar to evidence given to the Treasury Committee and Work and Pensions Committee in 2018 and we noted it was disappointing that the same level of complexity and lack of detailed guidance remains.

Although supportive of the government's aim to provide financial support towards the cost of childcare, we highlighted that the various childcare support schemes currently in existence mean the resulting childcare landscape is incredibly complex, which adds difficulty for anyone trying to navigate and understand it.

We identified three factors which lead to this complexity:

- differing qualifying conditions for each scheme;
- the potential financial support offered by each scheme; and
- the interactions between the schemes.

At present, there is not sufficient support and guidance to help people, who may qualify for help under more than one scheme, understand which scheme is best for them. This is more important when circumstances change, as there is a need to reassess and potentially reconsider the qualifying conditions for each scheme. Moving between schemes can be challenging – bringing delays in payments and the possibility of not being able to reverse the decision at a future date. This means that whilst in the short term a switch to another scheme might be desirable, in the longer term it may be more beneficial to stay in an existing scheme.

Much of the submission focuses on the guidance provided through the Childcare Choices and GOV.UK websites. The Childcare Choices website offers a 'find the right offer for you' tool which, in theory, should help people understand the various childcare schemes. However, we raised a number of concerns about the accuracy of the tool in terms of the questions asked, the fact that it contains errors and that it ignores potential scenarios. This means people may get an incorrect result, stating that a particular scheme is not available to them. They may therefore miss out on support if the tool prevents them from going any further and using the more detailed calculator or reading further information.

We also raised a number of similar concerns with the more detailed childcare calculator. We urged HMRC to:

- amend the calculator to include universal credit;
- amend the calculator to ensure all questions are relevant and accurate; and
- provide additional information about some of the questions so users can answer correctly.

A disclaimer should also be added to the front page making it clear who should not use the calculator.

Finally, from a claimant perspective, it is confusing to have some information on the Childcare Choices website and some on GOV.UK with no clear links between them. We recommended HMRC should review the guidance, tool and calculator to address all of these issues as soon as possible.

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a new mechanism for 'save as you earn' bonus rates was discussed, as was potential new EMI guidance on 'arrangements' and 'independence'.

Collection of Student Loans Consultation Group (CSL)

CIOT, LITRG and ATT representatives attend this forum. Topics discussed at its most recent meeting included:

- a service update: HMRC advised that they were concentrating on clearing self-assessment exceptions by 31 March;
- HMRC's follow-up actions when a start or stop notice is not acted on by an employer: HMRC have been conducting research and propose that a further notice will be sent via the employer's preferred communications method – electronic or postal – rather than sending an electronic generic notification service message;
- an update from the Department for Education: they reported that government research into the lifelong loan entitlement was published in early March and work on 'modular funding' loans is in progress; and
- an update from the Student Loans Company: it reported that there are 6.6 million borrowers in repayment, that 260,000 are repaying outside of the tax system, and that they have increased the threshold for automatic repayments to borrowers' bank accounts where they have over repaid to £5,000.

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GENERAL FEATURE PERSONAL TAX

Disability and the tax system: guidance

CIOT has published a blog for advisers with some technical research material on disability and the tax system.

Robin Williamson, former Technical Director for the CIOT's Low Incomes Tax Reform Group (LITRG) and longstanding LITRG volunteer, had a keen interest in how the tax system treats and supports people with disabilities. Prior to his passing (tinyurl.com/yphk2tk9) in September 2022, Robin had been working on a book on this subject. Although sadly his work was unfinished, we are grateful to his wife Jane Moore for sharing the completed chapters with us.

Following a review of the work by the LITRG technical staff, we have published the following completed chapters of Robin's book on the CIOT website in the hope they will be of interest and use to members of the tax profession:

- Chapter 2: Dealing with HMRC
- Chapter 5: Helping someone with their tax
- Chapter 7: Trusts for disabled and vulnerable beneficiaries

A further chapter relating to employees with disabilities (tinyurl.com/y5tt2n9z) was published in *Tax Adviser* in February 2022.

The chapters can be accessed on the CIOT website at tinyurl.com/2p9bbwyd.

Note: These publications are intended to be a general guide and cannot be a substitute for full research in relation to individual circumstances, or appropriate professional advice. The material was reviewed as at February 2022 and will not be reviewed on an ongoing basis.

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CIOT		Date sent
R&D Tax Reliefs Review: Consultation on a single scheme	www.tax.org.uk/ref1076	13/03/2023
Uncertainties in relation to Structures and Building Allowances	www.tax.org.uk/ref1085	15/03/2023
Land and Buildings Transaction Tax: Additional Dwelling Supplement legislation changes	www.tax.org.uk/ref1087	04/04/2023
Joint Professional Bodies letter to the Financial Secretary to the Treasury on Tax Simplification	www.tax.org.uk/ref1098	05/04/2023
ATT		
R&D Tax Reliefs Review: Consultation on a single scheme	www.att.org.uk/ref413	09/03/2023
Land and Buildings Transaction Tax: Additional Dwelling Supplement legislation changes	www.att.org.uk/ref418	04/04/2023
Joint Professional Bodies letter to the Financial Secretary to the Treasury on Tax Simplification	www.att.org.uk/ref423	05/04/2023
LITRG		
Education Committee inquiry: Support for childcare and the early years	www.litrg.org.uk/ref2738	13/03/2023
Finance Bill briefing: Clause 25: Relief relating to net pay arrangements	www.litrg.org.uk/ref2748	06/04/2023

News from CIOT and ATT

Report

New report highlights importance of good guidance

A new report from the CIOT's Low Incomes Tax Reform Group (LITRG) considers how HMRC can improve the way it provides guidance to taxpayers.

The LITRG report 'Good guidance: The importance of effective guidance for unrepresented taxpayers' argues that good guidance is essential to the maintenance of an effective and well-functioning tax system, and makes recommendations on potential improvements.

While HMRC has made progress in recent years to improve the availability of guidance to taxpayers – a point stressed by the Office of Tax Simplification in a 2021 review – an overwhelming majority of those who have contacted LITRG for tax help since 2017 (78%) say they did so because they were unable to find answers to their queries on GOV.UK.

In the report, LITRG cites a number of recent examples of inaccurate, ambiguous or misleading guidance on GOV.UK (some of which have now been addressed), to show how bad guidance can lead to confusion for both taxpayers and advisers. They include:

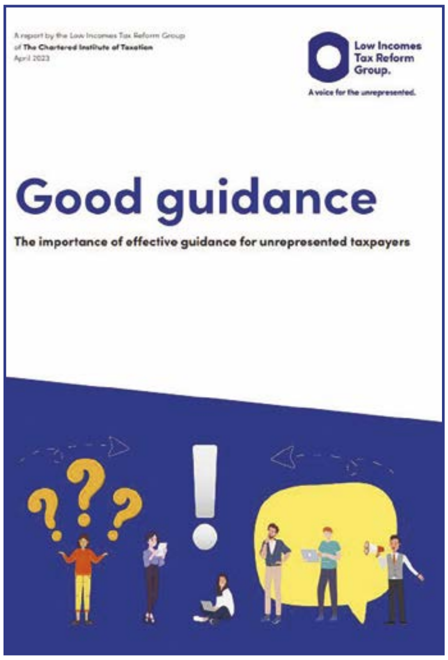
- an inaccurate starting threshold for Class 2 (self-employed) National Insurance remaining on GOV.UK for nine months after the threshold was increased in March 2022;
- taxpayers being advised that you 'do not pay tax on your savings interest if you're on a low income', a catch-all statement that fails to recognise the possibility that those on incomes under £20,000 per year may have savings capable of generating taxable interest; and
- guidance on reporting thresholds for property income using the word 'income' to mean both gross and net income simultaneously.

The LITRG report sets out 40 recommendations for improving the way that guidance is developed and communicated to taxpayers. These are aimed at ensuring good guidance can be:

- clear, accessible, comprehensive and technically accurate;
- user-tested, with examples to help taxpayers understand their obligations; and
- updated regularly to provide the most up-to-date position.

Victoria Todd, head of LITRG, said the need for good guidance was especially important for unrepresented taxpayers: 'Those taxpayers who cannot afford to pay a professional tax adviser to help them through the tax system rely on such guidance, so when it does not exist or falls short, it means that the tax system cannot function effectively. When this happens, we see non-compliance, confusion, frustration and the erosion of trust.'

Judith Freedman, Oxford Emeritus Professor of Tax Law, who wrote one of the



forewords to the paper, said the report offered '40 valuable and practical recommendations for improving clarity, accessibility and reliability'. She added that 'the scope and management of guidance and the degree to which it binds HMRC should be a significant element' of HMRC's ongoing Tax Administration Framework Review.

A feature article on the report, written by the LITRG team, will appear in the June edition of Tax Adviser. In the meantime, you can read the report at: https://bit.ly/41jzi8y

Political update

CIOT, ATT and LITRG work with politicians from all parties in pursuit of better informed tax policymaking.

CIOT, ATT and LITRG technical teams have been busy producing briefings and representations for MPs scrutinising the current Finance Bill. These included briefings on R&D credits reforms, the introduction of full expensing, the multinational and domestic top-up taxes (implementing OECD Pillar 2) and the net pay pensions top-up, ahead of these clauses being discussed at the Bill's Committee of Whole House on 18 and 19 April.

At the time of writing, further briefings are being prepared, including on abolition of the Office of Tax Simplification, for the Public Bill Committee, which commenced on 25 April. The briefings and updates on the Bill's proceedings can be read on the CIOT blog (tax.org.uk/blog/1).

Ahead of the Bill's second reading, a team from CIOT, ATT and LITRG arranged a briefing in Parliament to talk through key measures in the Bill with members of Labour's Treasury Team, including Shadow Financial Secretary James Murray MP. This included identifying areas where we have concerns, as well as answering the questions of the MPs and advisers.

Two recent reports from the Commons Public Accounts Committee have drawn on evidence from CIOT in reaching their conclusions. A report on the digital services tax, published on 5 April, had the Institute's concern that the 'blunt instrument' tax may be in place much longer than envisioned as one of its main observations. A report on the Covid economic support schemes, published on 8 March, drew attention to the Institute's warning that the application process for the self-employment income support scheme (SEISS) may have had the unintended effect of encouraging ineligible claims.

Tax proposals

Professional bodies call for tax simplification

Leading tax and accountancy professional bodies have come together to propose a series of actions ministers and officials should take if they are serious about delivering a simpler tax system.

Senior representatives from ATT, CIOT, ICAEW, ICAS and LITRG made the calls in a letter sent to tax minister Victoria Atkins.

In their letter, the bodies express regret at the decision to abolish the Office of Tax Simplification but welcome the Chancellor's assurance that simplifying tax remains a priority. They offer their support to officials, and set out a number of processes which the government should introduce in order to demonstrate its commitment to simplification, including:

1. Identify the characteristics of tax simplification
2. Ensure someone is accountable for delivery of tax simplification
3. Include simplification declarations in tax information and impact notes
4. Gain external input to policy design and implementation
5. Seek feedback from a broad range of stakeholders
6. Ensure HMRC and Treasury engagement groups include tax simplification as a standing objective
7. Increase awareness and improve guidance
8. Allow time for development and integration of systems
9. Adopt a consistent approach across tax regimes

Read the letter at: tinyurl.com/596fcdwp

Technical

50th anniversary a 'golden opportunity' to modernise VAT

ATT and CIOT both marked April's 50th anniversary of VAT with calls for the modernisation of the tax.

ATT said that 'baffling' food and drink rules, such as those which see milkshake powders taxed differently according to their flavour, should be reformed.

'Our VAT rules on food and drink are well past their "best before" date",' said Senga Prior, Chair of ATT's Technical Steering Group. 'Simplifying and rationalising these rules would reduce confusion, as well as saving both HMRC and taxpayers time and cost. Bringing more food and drink items into the zero rate or a reduced rate could also provide a financial benefit to the hospitality sector and those struggling with the rising cost of feeding their families.'

Gabby Donald, Chair of CIOT's Indirect Taxes Committee, said that there was a case 'for reducing the number of exemptions and exceptions, on a case-by-case basis, provided this is linked with a meaningful review of the welfare system to compensate low income consumers

Senga Prior

who need protection and would otherwise be worse off because of the change'.

CIOT has also suggested streamlining VAT administration and recently wrote to HMRC recommending that the ability to use Postponed Import VAT Accounting be extended to organisations which have non-business activity, such as universities. This would allow them to declare import VAT in their VAT return, instead of having to administer two import methods.

In the news

Coverage of CIOT and ATT in the print, broadcast and online media

'Christopher Thorpe, of the Chartered Institute of Taxation, said higher than expected tax receipts would give Jeremy Hunt "a bit more money to play with" in next month's Budget, but added: "We're still not expecting to see significant net tax cuts given the overall fiscal picture."'

Financial Times, 21 Feb

'John Cullinane, director of public policy at the CIOT, said there was a "strong case" for wider use of prosecutions by HMRC, but warned there was a risk of failed prosecutions taking up time and resources, resulting ultimately in a lower tax take for the Revenue, at least in the short term. He said: "Our preferred approach would be a public consultation on prosecution policy, to discuss the overall approach and the trade-offs needed to achieve that."'

Financial Times, 6 March

'If you're self-employed or work in the gig economy, you are required to keep accurate financial records for five years. The Low Incomes Tax Reform Group have good advice on this.'

Emma Jones, CEO of Enterprise Nation, quoted in Good Housekeeping, 14 March

'We believe the inheritance tax system, and especially taper relief, could be simplified and have previously called for the system to be restructured.'

Helen Thornley, ATT Technical Officer, on inheritance tax gifting rules, Daily Telegraph, 28 March

'It's very difficult to give any tax advice, other than to be aware that because these tax thresholds aren't changing, we are all gradually going to pay more tax as a proportion of our earnings, as other things go up to try and compensate for inflation.'

Helen Thornley of ATT discussing tax changes for the new financial year on Radio 4's Money Box, 5 April

'Until now, the divergence created by devolution has not led to any noticeable changes in taxpayer behaviour. However more noticeable divergence may prompt those who are able to, to consider whether they can legitimately reduce their liabilities by working less, paying a bit more into their pensions or incorporating a business in order to avoid higher tax rates.'

John Cullinane, CIOT director of public policy, on Scottish taxes in the Scottish Daily Mail, 6 April

Member support

Tax Advisers' Benevolent Fund

In these increasingly difficult and uncertain times, the Tax Advisers' Benevolent Fund is here to help and is needed more than ever before by members of our profession and by our students.

The Worshipful Company of Tax Advisers and its charities, in particular the Tax Advisers' Benevolent Fund, were essentially borne out of what are now the Chartered Institute of Taxation and the Association of Tax Technicians. After the Institute received its Royal Charter in 1994 and the Livery Company was formed in 1995, initially as a Guild, the bodies worked together to form the Benevolent Fund for the tax profession. The fund is supported by a combination of generous endowments and periodic donations.

The primary objectives of the Benevolent Fund are the relief of persons in need who are or have been members of the Chartered Institute of Taxation (and its successors and assigns) or of the predecessor body the Institute of Taxation or of the Association of Taxation Technicians (and its successors and assigns) or who are the wives, husbands, widows, widowers, issue or dependants, which is generously defined, of such persons. In other words, this is a hardship fund. In the unfortunate event that qualifying persons find themselves needing financial support, either personally or professionally, the fund is here acting as a safety net.

In addition, the Trustee of the Benevolent Fund supports the advancement of public education in and the promotion of the study of the administration and practice of taxation and the principles of economic and political science in relation to taxation and public finance. In practice, this means that to date the Benevolent Fund provides financial support and offers mentoring for students and prospective students studying for the examinations organised or sponsored by the the Association of Tax Technicians and the Chartered Institue of Taxation. This includes the ATT, the CTA and the ADIT qualifications.

Going forward, it is intended that the Benevolent Fund will also support the new Diploma in Tax Technology (DITT). If a

Lorraine Parkin

student or prospective student of the ATT or CIOT is not supported in their studies by their employer, and does not have the necessary means to fund their own studies, an application can be made to the Benevolent Fund for financial support.

Applications for grants from the Benevolent Fund and further information about making an application can be obtained from the Almoner of the Fund, John Dewhurst. You can email him at jdewhurst@chowndewhurst.com or by writing to The Almoner, Tax Advisers' Benevolent Fund c/c the CIOT, 30 Monck Street, London, SW1P 2AP.

Lorraine Parkin
Chair, Charities' Committee
Worshipful Company of Tax Advisers

Technical

Employment Taxes Voice 2023

The CIOT's Employment Taxes Committee has published its annual online edition of Employment Taxes Voice.

Employment Taxes Voice has been published online at www.taxadvisermagazine.com/employment-taxes-voice. Employment Taxes Voice is a specialist, technical online supplement from the CIOT's Employment Taxes Committee that is published annually around the end of the tax year. It provides an insight into the work of the Committee and includes practical advice on a wide range of topical issues relating to employment taxes.

In the 2023 edition of Employment Taxes Voice, the chair of the CIOT's Employment Taxes Committee looks at the work the Committee does throughout the year, including participation in various HMRC Forums, responding to consultations and our proactive submissions to HMRC and HM Treasury. All of these are aimed at improving life for employers, employees, practitioners and HMRC alike.

Over the last year, the Committee's public submissions included:

- a response to the Call for Evidence on hybrid and distance working issued by the Office of Tax Simplification;
- a Budget submission on employment taxes: this included a total of 34 recommendations relating to the cost of living (8), employment tax simplification (22) and pension tax matters (4); and
- a proactive submission that we made to HMRC's Employment Status and Intermediaries (IR35) Forum: this relates to the rules for IR35/off-payroll working (OPW) and how they should operate where things have not gone as they should, when the client has completed a Status Determination Statement (SDS) indicating 'outside IR35/OPW' when it should have indicated 'inside IR35/OPW'.

Employment Taxes Voice 2023 features articles from ten authors, including:

- the application of tax treaty tie breaker tests;
- tax reliefs for homeworking;
- company electric cars and reclaiming VAT;
- HMRC's interpretation of who is a managed service company provider;
- the agency rules;
- tax relief on contributions to workplace pensions;
- salary sacrifice arrangements;
- directors' tax and National Insurance; and
- the impact of the optional remuneration arrangements on group income protection.

So hopefully something for everyone!

Matthew Brown
matthewbrown@ciot.org.uk

Technical

Anti-Money Laundering: 2023/24 AML renewal

We provide some handy tips and guidance for completing your submission of your 2023/24 AML renewal.

Members currently under anti-money laundering (AML) supervision by the CIOT and ATT will receive an email reminder to renew their AML supervision at the beginning of May when the 2023/24 AML renewal application process becomes live. Here are our top tips to help you complete this year's renewal:

1. You can access your renewal either through the link in the email, or by logging into your member account here: tinyurl.com/MACompliance.
2. The form works best if accessed through the following browsers:
   - Microsoft Edge v86 or higher
   - Google Chrome v86 or higher

   Members have reported problems when using Firefox and Internet Explorer so these browsers are best avoided.
3. Your AML renewal form and fee payment **must** be completed by midnight **on 31 May 2023.** You will be directed to pay online immediately after you have submitted the form. **If your fee payment is outstanding after 31 May you will have failed to renew your AML supervision on time** (see point 4 for consequences).
4. It is a **legal obligation** under The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, as amended, to be supervised for AML. If you fail to renew on time, you will be referred to the **Taxation Disciplinary Board** for a fine or other disciplinary action.
5. The cost of annual supervision for 2023/24 is £330. The AML supervision year covered is from 1 June 2023 to 31 May 2024.
6. There are some new questions included this year, including: how clients pay your fees; and the particular types of higher risk clients which you might act for. Have details to hand in relation to your clients, how they pay their fees and the types of services you provide **before** you begin completing the form.

> **Your AML renewal form and fee payment must be completed by midnight on 31 May 2023**

7. Last year, we took out any questions regarding whether or not you have undertaken any Trust or Company Service Provider work (TCSP). However, owing to continuing government focus on this area of work we have added a question back in this year. We recommend that you review the guidance (see below links) on what constitutes TCSP work **before** you begin completing the form to be able to answer this question. For further information on these services, see the section on 'HMRC TCSP register Q&A for businesses' on the CIOT website: tinyurl.com/amlguide or ATT website: tinyurl.com/attaml.
8. At Question 33, you are asked: 'Do your AML policies and procedures ensure you undertake all sanctions related checks necessary as part of your client due diligence procedures to ensure you are allowed to act for a client?' This continues to be important, given the ongoing Russian sanctions in place following Russia's invasion of Ukraine. Further information can be found on our websites at CIOT: tinyurl.com/newsanctions and ATT: tinyurl.com/attnewsanctions
9. For sole practitioners, on questions that relate to 'all staff and principals', you should include yourself as a principal in your response (except for Question 37 which relates to communicating policies and procedures to staff – put 'N/A').
10. When putting the number of beneficial owners, officers and managers (BOOMs) on your form at Question 49, please remember to include yourself.
11. Relating to Question 50 you do not need to repeat criminality checks for existing BOOMs but you do need to carry out criminality checks for any additional BOOMs appointed on or after 1 June 2022 (if you have not done this already) and email the results to us separately at aml@tax.org.uk.
12. There is a function at the end for you to **review your answers** and if necessary, edit any errors before you submit the form. This is particularly helpful when completing the form on a **mobile phone**, as experience has shown that it is easy to hit the wrong button and give an erroneous non-compliant answer.

AGM

CIOT: Notice of Annual General Meeting

The Annual General Meeting of Members of the Chartered Institute of Taxation will be held on Tuesday 30 May 2023 at 16.45. The meeting will be held via Zoom.

Civica Election Services have been appointed as scrutineers for the CIOT AGM 2023. Access to the AGM Notice, Annual Report and Statutory Accounts and information regarding those standing for election to Council will be provided through links in an email, sent to members by Civica in late April. The Civica proxy voting site can also be accessed via that email, together with information on how to book attendance at the virtual AGM. There will be a reminder email sent in May.

If you prefer to receive a hard copy of the proxy form, please email: support@cesvotes.com or telephone: 0208 889 9203 and a form will be sent to you in the post with a reply-paid envelope. You will have until 26 May 2023 at 10am to return the form.

A copy of the proxy form, AGM Notice and Annual Report and Statutory Accounts are also available on the Institute's website at: www.tax.org.uk/annual-reports

Event

Simplification on the agenda at President's Networking event

On Monday 20 March, CIOT President Susan Ball hosted a networking event at the Great Scotland Yard Hotel in London. Over 70 guests attended the evening, which brought together tax policy makers and leading figures from the tax profession. This was a new event for CIOT, and we were delighted to welcome Jim Harra, Chief Executive of HMRC, as our guest speaker.

In her opening remarks, Susan Ball said that, while there were some measures to welcome in the recent Budget, one disappointment had been that there was nothing in there about increasing HMRC's resources. 'I know Jim doesn't need me to tell him how challenged service levels still are. And I know he and his colleagues are doing their best. But HMRC continues to be asked to do more, with less. If the government is serious about improving growth and productivity, we need a properly funded and efficient HMRC, supporting business, providing prompt refunds and answers to queries.'

The CIOT President presented her predecessor Peter Rayney with his Past President's certificate and badge at the event. She also paid tribute to the Institute's Director of Public Policy, John Cullinane, who is shortly to retire.

In his speech, Jim Harra acknowledged frustrations over service levels and spoke of the 'key challenge' of meeting demand for services with ever-shrinking resources. 'We want to improve our customer service levels,' he said, but continued: 'In a world of limited and falling real terms budgets, we can only do that by getting even more taxpayers to use our digital services and to self-serve online.' He said that every pound HMRC spends 'represents an opportunity cost and I can't go cap in hand to the Treasury for additional funding for customer services because some customers who could self-serve choose not to do so.'

The HMRC chief executive said that during the coming years HMRC would be 'bringing together digital services under one consistent brand and providing an improved digital experience through a new online account designed around taxpayer tasks and needs. We will add new digital features and services regularly to improve the customer experience, such as moving child benefit online, or making it easier for customers to change their personal details or find out their National Insurance number.' He added that HMRC is planning to extend Self Serve Time to Pay to VAT customers this year.

Jim Harra said that working closely with tax professionals is at the heart of how the tax authority wants to modernise and build trust in the tax system. 'It's through working closely with yourselves, and your members, as well as wider stakeholder groups, that we can identify the pain points, challenge ingrained problems, find solutions and simplify the tax system. We might not always see eye to eye, but together we have a shared purpose to create a healthy tax system – helping citizens and businesses meet their obligations and receive their entitlements.'

He paid particular attention to tax simplification, saying that measures in the Budget – alongside the government's statement that new policy, as well as existing tax rules, 'will be subject to more scrutiny to make sure that changes are as easy to administer as possible' – shows that HMRC means business. 'Simplification lies at the heart of HMRC's tax administration strategy and we will work closely with stakeholders such as the CIOT to get this right.'

Following the speeches, those at the event split into 10 groups to consider ideas for how HMRC could effectively embed simplification into the tax system. The notes from this exercise have been collated and are being fed back to HMRC.


Jim Harra


Susan Ball


President's Networking event

Susan Ball and Peter Rayney

Webinars

An expanded range of ADIT Webinars

Led by experts from across tax practice, industry and government, our ADIT International Tax Webinars are a convenient, accessible way to keep up with the latest international tax developments.

As tax professionals around the world contend with a range of complex questions, demand for up-to-date information from experts has never been higher. Fortunately, it's also never been easier to explore the latest topics with international tax thought leaders and to contribute on subjects that matter to you.

Highlights from last year's programme of ADIT International Tax Webinars included a panel session on the UN Handbook and its implications for the taxation of extractive industries, featuring experts Anna Theeuwes, Chris Sanger, Emily Muyaa, Jim Robertson and Olivier Munyaneza. ADIT graduate Apurva Kejriwal discussed the transfer pricing consequences across the banking industry of the recent LIBOR phase-out, while ADIT Champion Ann Barnshaw Kengaaju and International Tax Affiliate Lakshmi Solayen explored the impacts of information exchange upon the rights of taxpayers.

We also began delivering webinars on international tax learning and the skills necessary to complete the ADIT exams, with ADIT tutor Lisa-Jane Harper and one of our award-winning students, Kieran Hutchinson Dean, offering their insights on how to effectively combine international tax study with career and family demands.

This year's International Tax Webinar series will build and expand upon the topics encountered in previous sessions, as experienced by professionals, employers and clients. There is a nominal fee to register and attend each of these webinars, with free entry for those ADIT graduates who hold International Tax Affiliate status.

Meanwhile our fast-growing range of ADIT Network Webinars, featuring insights from members across national and regional ADIT communities, enables international tax professionals from Cyprus to Romania, and the Gulf to Southeast Asia, to connect and discuss the tax topics that are most specific to them. Entry to the ADIT Network Webinars is free for all participants.

To find information about upcoming ADIT webinars, access previous recordings, or suggest a topic for a future webinar, visit: www.tax.org.uk/adit/events.

A MEMBER'S VIEW

Connor Whelan

Tax Manager, Mercedes-Benz UK

This month's member spotlight is on Connor Whelan, Tax Manager for Mercedes-Benz UK and member of ATT, who tells us what 'drives' him in tax.

How did you find out about a career in tax?

Like many tax professionals, by accident! I had completed my AAT qualification and had my first 'proper' accounts role at a small local airport, but an entry level tax role arose at a local Big4 office. I was successful in my application and the rest is history.

Why is the ATT qualification important?

The world of taxation can be complex, and it is crucial that any tax professional is adept with the complexities that the industry may present. The ATT qualification offers an excellent foundation in taxation, covering a broad range of disciplines, and consequently demonstrates your level of professional knowledge and standards to your peers, employers and client alike.

Why did you pursue a career in tax?

Money, business and the government has always been of interest to me, and so exploring the tax profession was a natural choice. Tax has a knock on effect to all levels of the economy, whether it's how much revenue HMRC collects for the government to spend on public services; how much profit a business can spend on development, investment and their employees; or how much money a person has to see them through the month. This makes our work both meaningful and relatable, perhaps more so than many other roles and industries.

Furthermore, a career in tax allows me to use and build a variety of skills within a highly regarded and reputable profession. The profession offers huge opportunities for development and progression, which are also very important to me. The tax profession is, and always will be, highly sought after, and so the job security that comes with a career in tax is an added bonus.

How would you describe yourself in three words?

Approachable, ambitious and conscientious.

Who has influenced you in your career so far?

I have been very fortunate to have worked with a number of different managers and peers in my career and it would be a disservice to name just one. Each and every one of them has taught me something, whether it's the development of my tax technical knowledge, or building and enhancing my softer skills.

What advice would you give to someone thinking of doing the ATT qualification?

If you are looking to pursue a career in tax, then the ATT qualification is a great starting point as no prior knowledge or experience is required (though it may be useful). Be sure to put the time and effort into studying – it will pay off.

What are your predictions for tax advisers and the tax industry in the future?

I think it's fair to say that further digitisation is to be expected in all aspects of our lives, and this will surely translate into changes being made to the tax systems in place both in the UK and globally. The extent to which artificial intelligence has a role in the tax profession is yet to be seen, but I have no doubt that all roles (both in and out of tax) will alter in some way.

What advice would you give to your future self?

If only I had a crystal ball to predict the future and where I might be, or to at least share some winning lottery numbers! In any case, keep going, and trust yourself.

Contact

If you would like to take part in 'A member's view', please contact Salema Hafiz at: shafiz@ciot.org.uk

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Saffery Champness Harrogate

We are a leading national firm of chartered accountants and business advisors with an office in central Harrogate. We advise a wide range of commercial businesses, private individuals, landed estates, and not-for-profit organisations.

Our client base is diverse and includes owner-managed, small and mid-cap businesses, and private and estate clients. We work with clients to create bespoke solutions across their personal and business interests in building value at all stages to achieve long-term goals, often working alongside other professionals in the process.

Our office is based in the centre of the charming Victorian spa town of Harrogate, in the heart of North Yorkshire. We are ideally placed to serve not only clients in Harrogate and Leeds, but also the Yorkshire region with a population of over 5 million. Yorkshire remains a thriving community with many dynamic cities, and we are proud to look after a wide range of both private and corporate clients.

Our Yorkshire practice, with 7 partners and employing 81 members of staff, offers a suite of services ranging from tax and business advisory to audit. Due to expansion we seek several key hires for the tax team:

Corporate Tax Senior Manager or Director – departmental lead

The successful candidate will help partners to run the corporate tax offering, including developing and mentoring more junior staff. They will have an oversight of compliance and a wide range of advisory work, but a compliance focussed candidate would also be considered.

Landed Estates Specialist – a national role

Hires considered from Assistant Manager to Senior Manager level. You will work closely with the Head of Trusts and Landed Estates.

Corporate Tax Compliance Manager

This role involves managing client work and more junior staff. We would consider partly or fully remote working.

Senior Manager or Manager – Personal Tax – advisory focus

Could suit a manager looking for a step up to Senior Manager. Trust experience an advantage.

We are able to offer hybrid and flexible working.

To find out more about our friendly and positive working culture, or for more information about roles available, please contact our retained recruitment consultant Georgiana Head on 07957 842 402 or email her at georgiana@ghrtax.com.

Saffery Champness

Property and SDLT Tax Advisors
Nationwide
£45,000 to £85,000 + bonus (up to 50%) + benefits

Our client is launching a new division of an established consultancy business that will focus on Property and Stamp Tax projects and clients.

The business model is partnered up with a major aggregator in the financial services sector that will create a client and income stream over the next 3-5 years and beyond. This is a very exciting project and partnership and will offer any candidate a new role and career which is flexible, creative and give them the opportunity to share in the success of the growth in the company.

The candidates

We are looking for qualified tax advisors (CTA) with at least 2 years' experience in Property and SDLT advisory work. We will also consider solicitors who have strong stamp taxes experience. Will also consider those looking for part time or flexible working. This is a major project and we are looking to hire stamp taxes specialists at grades from Assistant Manager through to Director and there is huge scope for personal and professional development in this business.

The roles

We are building a team that will be managing a portfolio of new clients giving them end to end tax advice centred on SDLT claims and other property taxes. The team will be allocated projects and clients each month to work on and all of this work will focus on advisory tax services dealing directly with the client.

These roles can be flexibly worked and based from home. The salary will be generous and there will be the opportunity to earn uncapped bonuses linked to the success of the business. This should be upwards of 40 % to 50% of Annual Salary in the first year.

For further information please contact our retained consultant Georgiana Head on 07957 842 402 or email her at georgiana@ghrtax.com

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TAXATION-JOBS

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Personal Tax Advisory Manager London (hybrid) £60,000 – £70,000	The role will involve advising UK res non doms on income and capital taxes planning, offshore structuring, remittance, transfer of assets abroad etc. Very much a client-facing role, you will take primary responsibility for a portfolio of clients. However, you will also have the opportunity to work closely with the partners on marketing, networking and business development initiatives. Indeed, you will be encouraged to build a 'name' in the market as high-profile 'go-to' private client tax expert. This is a modern, friendly and supportive firm that offers hybrid and flexible working options.They have a strong track-record of promoting from within and are keen to find someone who has the potential to progress swiftly to Senior Manager and Director grades.
Private Client Senior Manager Birmingham Competitive salary + benefits	As a Private Client Tax Manager, you will be expected to provide a range of Tax services, focusing on a private client portfolio, specialising in personal tax across a mix of compliance and advisory work. Our clients come from all industries, so exposure to multiple sectors would be a distinct advantage. More specifically this would include identification of tax sensitive expenditure and wider tax issues, liaising with clients to resolve queries, communicating with internal departments to ensure deadlines are met, and overseeing client portfolios to ensure HMRC deadlines are met.
OMB Tax Manager/Senior Manager Bristol Salary dependent on level	The role will be to focus on the private company market and become the "trusted adviser" to this client base. Liaising with the business owners and client finance teams you will become their go-to adviser. People management and mentoring will be a key element of the role as will developing strong networking links internally. Ideally you will come from either a Big 4, Top 20 or an independent practice and have a good understanding of the tax issues pertinent to entrepreneurs. This is a great role for someone looking for further progression and the opportunity to make a mark.
Partnership Tax Manager London £50,000 – £70,000	Our client offers specialist private client and partnership tax expertise across a plethora of clients both in the UK and internationally and as such is able to offer a varied and challenging portfolio. There is a current need for a Partnership Tax Manager within the London office, who will be responsible for dealing clients from professional services and investment fund management sectors, particularly partnerships and LLPs as well as some corporate clients. You must be ACA or CTA qualified and have UK post qualification experience. Moreover, you must have worked in a corporate or partnership tax role in a large professional services firm.
Corporate Tax Accounting and Compliance Senior Manager London £75,000 – £84,000 + bonus + benefits	Join a dynamic and highly-ranked firm and be part of a bright future. The corporate tax team is looking for an experienced corporate tax accounting and compliance specialist with the ambition to advance. The team is focused on delivering audit and tax services to the firm's largest clients. You will work alongside the senior management team and partners to provide compliance and accounting support to the firm's clients and bespoke tax advice. You will have experience in tax audit assignments, both for listed and privately owned large businesses, interim tax reporting, and managing large and complex tax compliance projects for UK groups. This is a new team in an established business and, as such, will offer you a fast track to director.

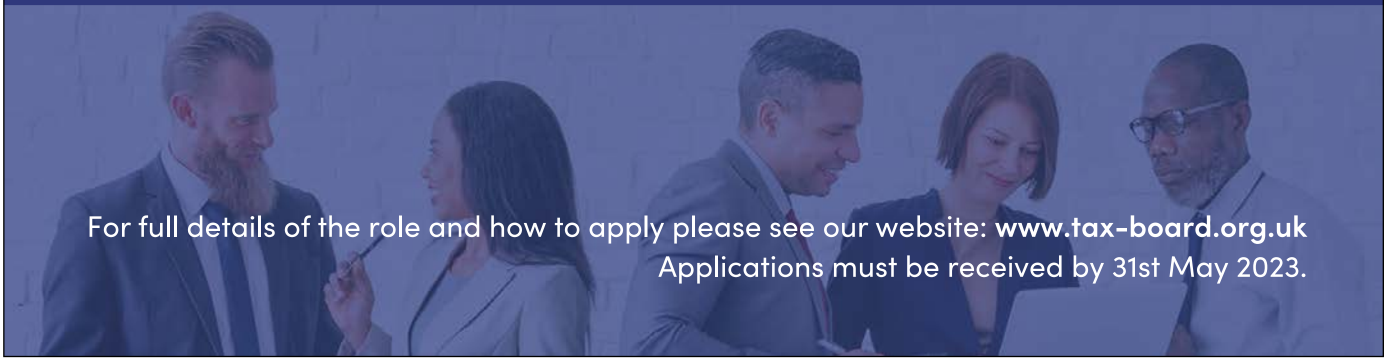
Corporate Tax Manager Harrogate £50,000 – £56,000	Our client is a Firm of Chartered Accountants based in Harrogate who are currently recruiting for a Corporate Tax Manager to join the firm. The successful candidate should be qualified ACA/CTA (or equivalent) with extensive corporate tax experience. You will be expected to use your own initiative and work as part of a team, liaising with other tax specialists, audit and corporate finance colleagues. The successful candidate will need to be able to manage a compliance portfolio, help develop more junior staff and have experience of working with larger clients/groups. The role will be a mix of compliance and advisory or can be more of a compliance role – depending on the successful candidates skillset.
UK Tax Manager (in-house) Ormskirk, Lancashire £55,000 – £65,000 +benefits	We are looking for a talented individual to join this Group Tax Team, as the UK Tax Manager working on a hybrid basis. As part of the global tax team, you will be responsible for managing all aspects of the Group's UK tax compliance, (excluding VAT) liaising with the UK and overseas Finance Controllers and tax managers to manage the UK tax requirements. Managing the UK Corporate Tax Compliance process ensuring that all filing deadlines are met and exposures to penalties are minimised. This includes managing the relationship with out-sourced UK tax compliance providers.
Stamp Taxes & Property Tax Advisors Countrywide £55,000 – £120,000	We are looking for Qualified tax advisors (CTA) with at least 2 years' experience in Property and SDLT advisory work. We will also consider solicitors who have strong stamp taxes experience. Looking at grades from Assistant Manager through to Director and there is huge scope for development. We are building a team that will be managing a portfolio of new clients giving them end to end tax advice centred on SDLT claims and other property taxes. The team will be allocated projects and clients each month to work on and all of this work will focus on advisory tax services dealing directly with the client. These roles can be flexibly worked and based from home initially.
VAT Manager (in-house) West Midlands £60,000 – £70,000 + bonus + benefits	Outstanding in-house VAT opportunity with real progression potential. Focus on advisory. Lots of interesting property VAT work and the chance to be a true business partner. Succession plan for incumbent VAT lead. You'll need a strong technical VAT background in a wide variety of UK VAT issues to succeed. In return, you'll get a great package, work/life balance and a career defining opportunity.
Indirect Tax Manager London £100,000 – £110,000 + bonus + benefits	A brand name insurer in the Lloyd's market is recruiting for an in-house Tax Manager. The successful candidate will take ownership of indirect and employment tax matters for the Lloyd's syndicates, UK&I entities with some international oversight additionally. Reporting directly to the Head of Tax, the successful candidate will operate collaborate a small, intimate tax team and as such involvement in some wider taxes can be expected (namely international & TP). Additional, key wider stakeholders will be found in finance, HR and the Lloyd's tax team. You will have: ACA/CTA qualification; solid UK indirect tax compliance experience within the financial services, including experience following PESMs; experience with managing VAT controls and optimising indirect tax processes; and experience with employment taxes desirable, however not a pre-requisite.

Appointment of Tax Professional Investigation Committee and Disciplinary Tribunal Members

TAXATION DISCIPLINARY BOARD

The Taxation Disciplinary Board Limited (TDB) deals with complaints and disciplinary matters involving members and students of the Chartered Institute of Taxation (CIOT) and the Association of Taxation Technicians (ATT).

The TDB wants to appoint new members, who will be either ATT or CIOT members, as part of an expansion program. Panel Members will participate in both Investigation Committees and Disciplinary Tribunals where they will consider complaints and determine whether there is a prima facie case of misconduct by the member or student. They may also sit as assessors to hear appeals against such decisions. Panel Members will also be expected to hear cases referred by the Investigation Committee and, when appropriate, impose sanctions. Panel Members may also sit on Appeal Tribunals to hear appeals against findings made by Disciplinary Tribunals.



For full details of the role and how to apply please see our website: **www.tax-board.org.uk**

Applications must be received by 31st May 2023.

MAGNETIC NORTH

GUIDING YOU TO THE BEST TAX JOBS IN THE NORTH OF ENGLAND

UK TAX MANAGER

LANCS / HYBRID c.£60,000+ generous bonus

As part of the global tax team, you will be managing all aspects of the Group's UK tax compliance (excluding VAT), liaising with UK & overseas FCs to manage the UK tax requirements and the relationship with out-sourced UK tax compliance providers. You will also provide support to Group Tax Controller with various ad-hoc tax work including UK M&A work. Huge scope for the job holder to progress their career further within the Group's global tax team. **REF: R3451**

TECHNICAL TAX MANAGER

MANCHESTER OR LEEDS £competitive

Top 10 opportunity for an ATT or CTA qualified professional with significant experience of complex private client compliance including international work. This is an expanding team nationally who work with extremely high-profile clients. You will be expected to have strong client facing skills as much as technical experience, with the ability to manage a small team. **REF: C3452**

PERSONAL TAX SENIOR

MANCHESTER To £40k dep on exp

Our client is a leading **Top 20 firm** and due to continued expansion within private client it seeks Tax Seniors and Tax AMs to join a new function which will not only develop your compliance skills but develop your advisory skills. Its client base is a wide range of high-net-worth private clients, these include those with UK and offshore property interests, property owners, business owners, partnerships, and trusts. You must be at least ATT qualified with strong compliance experience. Excellent benefits including hybrid and flexible working. **REF: C3453**

IN HOUSE VAT MANAGER

MANCHESTER £55,000 – £65,000 + bens

This first tax appointment is crucial to the ongoing evolution of the finance function in a rapidly growing international business. You will be responsible for the VAT activities across all territories, ensuring that all filing/compliance requirements are met and that the optimal VAT position is maintained. As this is a brand-new post there will be plenty of variety as well as scope to decide your own processes and priorities. This would be a great 1st or 2nd move for someone with a "can do" attitude, keen to move to a broader role looking at other aspects of tax and finance within the business. **REF: R3450**

MIXED TAX MANAGER

SHEFFIELD To £50k dep on exp

Our client is a respected, forward-thinking practice with offices across Yorkshire and the Midlands. Joining an established team, you will be working for an impressive Tax Partner who is keen to support and develop someone new to the role. The role is perfect for someone experienced by Tax Senior or Assistant Manager either qualified or qualified by experience, ready to take the next step and become more actively involved in the team and with more complex clients. **REF: C3429**

PERSONAL TAX SENIOR

MANCHESTER £highly competitive

This high-profile national accountancy firm with a global reach, and significant local expertise seeks an experienced and ambitious Personal Tax Senior as part of its growth plans. A firm with a focus on career and personal development, you will feel valued, respected, and enjoy working with a fantastic team. This role would suit a Tax Senior seeking to gain exposure to more interesting and complex compliance work whilst on a defined path to Assistant Manager. **REF: C3438**

CORPORATE TAX SENIOR M'GER

LANCASHIRE To £75,000 dep on exp

Fantastic opportunity for an experienced corporate tax manager or senior manager to join this regional firm that boasts a fantastic client base and high calibre team. You will be responsible for managing a portfolio of impressive corporate tax clients including overseeing the tax compliance work and working on a wide range of tax advisory projects including a significant amount of M&A tax work. **REF: A3454**

TAX PARTNERS

ACROSS THE NORTH £Exceptional

We are delighted to be working with several accountancy firms ranging from Top 10 through to local independent firms that are looking to recruit either established tax partners coming from a corporate, personal or mixed tax background or ambitious directors looking to achieve partnership in the short term. Please get in touch for a confidential discussion to find out more. **REF: CONTACT IAN**

longman
tax recruitment

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